APPELLATE COURT
OF THE
STATE OF CONNECTICUT

AC 45401

X06-UWY-CV-18-6046436S
X06-UWY-CV-18-6046437S
X06-UWY-CV-18-6046438S

ERICA LAFFERTY, ET AL.
V.
ALEX EMRIC JONES, ET AL.

WILLIAM SHERLACH
V.
ALEX EMRIC JONES, ET AL.

WILLIAM SHERLACH, ET AL.
V.
ALEX EMRIC JONES, ET AL.

PLAINTIFFS-RESPONDENTS' SUPPLEMENTAL MEMORANDUM

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The short history of this appeal is one of jurisdictional defects, groundless attempts to have the proceedings stayed because of entirely separate bankruptcy proceedings, and an absolute lack of any effort to prosecute. Four of the five appellants are not aggrieved by the contempt order being appealed from, resulting in a lack of subject matter jurisdiction over their appeals. Their appeals must be dismissed. The fifth appellant, Alex Jones, has not taken a single action to prosecute this appeal since filing it over two months ago, and has disregarded the Court's order that he submit the documents required by Practice Book § 63-4 or face dismissal. For this reason, his appeal should be dismissed.

I. STANDARD FOR MOTION TO DISMISS

"The court may on its own motion order that an appeal or writ of error be dismissed for lack of jurisdiction or other defect." Prac. Bk. § 66-8. "[B]oth aggrievement and mootness implicate the court's subject matter jurisdiction. . . . Because [a] possible absence of subject matter jurisdiction must be addressed and decided whenever the issue is raised . . . on appeal . . . we must address whether the petitioner has overcome both hurdles to appellate review." *In re Ava W.*, 336 Conn. 545, 553 (2020). "Mere status as a party or a participant in the proceedings below does not in and of itself constitute aggrievement for the purposes of appellate review." *Windham Taxpayers Ass'n v. Bd. of Selectmen of Town of Windham*, 234 Conn. 513, 523 (1995).

Further, "[i]f a party shall fail to prosecute an appeal with proper diligence, the court may dismiss the appeal with costs." Prac. Bk. § 85-1. "The court must analyze the entire course of conduct and determine whether, under the circumstances, any good reason appears why the appellant should be permitted further to pursue his appeal." *Loomis v. Zoning Comm'n of Town of E. Hartford*, 144 Conn. 743, 746 (1957).

II. FACTUAL AND PROCEDURAL BACKGROUND

Mr. Jones's deposition was noticed to be taken in Austin, Texas on March 23 and March 24. DN 750, Pl. Contempt Mot. at Ex. B, Jones 3/23/22-3/24/22 Dep. Notice.[1] Two days before his deposition was to commence, Mr. Jones sought an emergency protective order to prevent the deposition, which the trial court denied. DN 730.10. The claimed basis was that a physician had advised Mr. Jones he should not attend his deposition. DN 730, Def. 3/21/22 Am. Mot. for Protective Order at 1. At oral argument the day before Mr. Jones's deposition, counsel stated that the physician directed Mr. Jones to stay at home pending the outcome of unspecified medical testing. *E.g.* DN 737, 3/22/22 Hrg. Tr. at 2:15-17. Confronted with Mr. Jones's own broadcasts, Mr. Jones's counsel then conceded that Mr. Jones was broadcasting live from his studio, which is not at his home, on both the day the emergency motion was filed and the day it was argued. *Id.* at 18:16-17 (conceding Mr. Jones was broadcasting on March 21); DN 733, Notice to Court (conceding Mr. Jones was broadcasting on March 22 from the studio, which is not at his home).

The trial court denied the motion for protective order, and plaintiffs' counsel appeared for deposition in Austin on March 23. Mr. Jones did not attend. At an emergency hearing held March 23 and in writing thereafter, the trial court ordered Mr. Jones to appear for his deposition on March 24. DN 735, 3/23/22 Order. Mr. Jones did not attend his March 24 deposition.

On March 23, aware that Mr. Jones had not appeared for his March 23 deposition and having ordered him to appear for his March 24 deposition, the trial court put the Jones

[1] "DN" citations are to the Superior Court docket in these consolidated cases. Key filings are attached as exhibits.

defendants on notice that it would hold a hearing regarding their objections to sanctions on March 30 and set a briefing schedule leading up to that hearing. DN 734.10 3/23/22 Order. Pursuant to that briefing schedule, the plaintiffs moved to hold Mr. Jones in contempt for refusing to attend his March 23 and March 24 deposition and sought sanctions to compel Mr. Jones to sit for deposition. DN 750, Mot. for Civ. Contempt. The Jones defendants objected, DN 752, and the plaintiffs replied, DN 784.

On March 30, the court held the previously noticed hearing. After argument, the trial court held Mr. Jones in civil contempt, finding

> by clear and convincing evidence that the defendant, Alex Jones, willfully and in bad faith violated without justification several clear Court orders requiring his attendance at his depositions on March 23rd and March 24th. That is, the Court finds that Mr. Jones intentionally failed to comply with the orders of the Court and that there was no adequate factual basis to explain his failures to obey the orders of the Court.

Ex. A, DN 788, 3/30/22 Hrg. Tr. at 25:13-21.

The trial court ordered Mr. Jones to pay "conditional fines of $25,000 each weekday beginning on Friday, April 1st, increasing by $25,000 per weekday payable to the Clerk of the Court" until he chose to appear for deposition. *Id.* at 26:5-6. No fine would be incurred on weekends or on days on which Mr. Jones completed a full day's deposition. *Id.* The trial court found "that this fine, while a conditional fine, is also coercive, but finds that it is reasonable and necessary in this matter." *Id.* at 27:2-4. The trial court explained that Mr. Jones could request reimbursement of any fines paid once he completed his deposition. *Id.* at 27:5-7. Indeed, the trial court emphasized that Mr. Jones need not pay any fine at all because he could choose to appear for a deposition on April 1 if he gave plaintiffs' counsel a mere 24-hours' notice. *Id.* at 26:12-17. The Jones defendants filed a motion to stay the

court's finding of contempt. DN 789, Defs.' Mot. for Stay. The trial court denied the motion. DN 789.10, 4/1/22 Order Denying Motion for Stay.

Following the contempt rulings, the Jones defendants filed an application to appeal to the Supreme Court pursuant to General Statutes § 52-265a. That appeal was returned for failure to comply with filing procedures and the Jones defendants have not re-filed it. *See* Mot SC 210270. Although only Mr. Jones had been found in contempt, all the Jones defendants then filed this appeal on April 1, 2022. *See* AC 45401, Appeal. That same day, the Jones defendants filed a motion for review of the trial court's denial of their motion to stay. *See* AC 45401, 4/1/22 Motion. The Court denied the motion for review on April 4. *See* AC 45401, 4/4/22 Order.

On April 5 and 6, Mr. Jones sat for his deposition. Pursuant to the trial court's contempt order, he had paid $75,000 in fines for choosing not to appear on either April 1 or April 4. Following completion of Mr. Jones's deposition, the Jones defendants moved to have the $75,000 in fines returned to him. *See* DN 796 Mot. for Order. The trial court granted their motion and ordered the fines returned. *See* DN 796.1, Order.

Regarding their appeal to this Court, under Practice Book § 63-4, the Jones defendants were required to file with the appellate clerk the preliminary statement of issues, the designation of the proposed contents of the clerk appendix, the docketing statement, the preargument conference statement, and the certificate regarding the transcript by April 11, 2022. They did not do so. On April 14, the Court entered an order that the appeal would be dismissed "unless the appellant files the above-referenced Practice Book § 63-4 documents on or before *April 25, 2022*." AC 45401, 4/14/22 Delinquency Order (emphasis in original). The Jones defendants still have not filed these documents with the Court.

On April 18, 2022, three of the Jones defendants – Infowars, LLC; Infowars Health, LLC; and Prison Planet TV, LLC (hereafter, "the shell company debtors")[2] – filed petitions for chapter 11 bankruptcy in the United States Bankruptcy Court for the Southern District of Texas. *See* AC 45401, 4/25/22 Correspondence to Court. Alex Jones did not file for bankruptcy.[3]

Also on April 18, the shell company debtors filed a notice in the trial court stating that they had removed that action to the United States Bankruptcy Court for the District of Connecticut, citing the Texas bankruptcy as justification. *See* DN 810, Notice of Removal. In this Court, instead of filing the § 63-4 documents as required by the Court's Delinquency Order on April 25, the shell company debtors filed a Notice and Suggestion of Bankruptcy, which the Court returned the next day for improper e-filing. *See* AC 45401, 4/25/22 Correspondence to Court. The shell company debtors did not re-file their notice of bankruptcy until May 27, 2022. *See* AC 45401, 5/27/22 Bankruptcy Notice. Alex Jones has taken no action in this appeal since April 1, 2022, even though he never filed for bankruptcy and was not affected by the automatic bankruptcy stay.

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[2] Throughout discovery the Jones defendants have represented that these entities are essentially shell companies with no employees, no business purpose, and little-to-no assets. *See, e.g.*, Ex. B, 6/23/21 Dep. Tr. at 18:13 (corporate designee for Infowars, LLC testifying that it "has no business purpose"); Ex. C, 6/23/21 Dep. Tr. at 14:4-7, 15:17-18, 15:21-23 (Infowars Health, LLC has never employed anyone, has no office space, and has never conducted any business except with one other entity); Ex. D, 6/23/21 Dep. Tr. at 14:17-21, 19:9-11 (Prison Planet TV, LLC has never employed anyone and has not had any purpose since September 2018).

[3] The bankruptcy petitions were, in the words of the United States Trustee for Region 7, who moved to dismiss the bankruptcy filings, "classic bad faith filings" that "serve no valid bankruptcy purpose and were filed to gain a tactical advantage in the Sandy Hook Lawsuits." Ex. E, Mot. of U.S. Trustee to Dismiss, Bankr. Ct. SD TX Doc. No. 22-60020, ECF No. 50 at 2.

On May 2, 2022, the plaintiffs sought and obtained dismissal of their claims against the shell company debtors only and sought remand.[4] Ex. F, Mot. to Dismiss; Ex. G, Order Granting Mot. to Dismiss. On June 1, 2022, this action was remanded to Connecticut Superior Court. *See* DN 813, Notice of Remand.

On May 31, 2022, the Court, sua sponte, ordered supplemental briefing on whether this appeal

> (1) should not be dismissed for lack of aggrievement insofar as Infowars, LLC; Free Speech Systems, LLC; Infowars Health, LLC; and Prison Planet TV, LLC, are included as appellants on the appeal form; and (2) should be stayed pursuant to 11 U.S.C. § 362 where nothing in the "notice and suggestion of bankruptcy," filed in this Court on May 27, 2022, indicates that the defendant Alex Jones has filed for bankruptcy protection, and the parties who have filed for bankruptcy were not the subject of the contempt order at issue in this appeal.

AC 45401, 5/31/22 Order.

III. THIS APPEAL SHOULD BE DISMISSED

A. Four of the Appellants are Not Aggrieved, and Their Appeals Must Be Dismissed

The Court is correct that "Infowars, LLC; Free Speech Systems, LLC; Infowars Health, LLC; and Prison Planet TV, LLC, are included as appellants on the appeal form" but are "not the subject of the contempt order at issue in this appeal." AC 45401, 5/31/22 Order. Only Alex Jones was the subject of the contempt order. *See* DN 787, Mem. of Decision at 5 ("the Court has adjudicated Mr. Jones in contempt [and] Mr. Jones himself has the ability to purge the contempt"). Accordingly, four of the five appellants in this appeal

[4] Accordingly, Infowars, LLC; Infowars Health, LLC; and Prison Planet TV, LLC are no longer defendants in this action. *See* DN 821, Order. All of the plaintiffs' claims against Alex Jones and Free Speech Systems, LLC remain active.

are not aggrieved by the order being appealed, and the Court lacks subject matter jurisdiction over their appeals.

"The right of appeal is purely statutory. It is accorded only if the conditions fixed by statute and the rules of court for taking and prosecuting the appeal are met." *State v. Curcio*, 191 Conn. 27, 30 (1983). "The statutory right to appeal is limited to appeals by *aggrieved parties* from final judgments." *Id.* (emphasis added); *see also* Conn. Gen. Stat. § 52-263 (requiring an appellant to be "aggrieved"). "[A]ggrievement . . . implicate[s] the court's subject matter jurisdiction. . . . Because [a] possible absence of subject matter jurisdiction must be addressed and decided whenever the issue is raised . . . on appeal . . . we must address whether the petitioner has overcome [this] hurdle[] to appellate review." *In re Ava W.*, 336 Conn. at 553. "Mere status as a party or a participant in the proceedings below does not in and of itself constitute aggrievement for the purposes of appellate review." *Windham Taxpayers Ass'n*, 234 Conn. at 523.

The test for determining aggrievement "encompasses a well settled twofold determination," *In re Ava W.*, 336 at 554:

> first, the party claiming aggrievement must demonstrate a specific personal and legal interest in the subject matter of the decision, as distinguished from a general interest shared by the community as a whole; second, the party claiming aggrievement must establish that this specific personal and legal interest has been specially and injuriously affected by the decision.

Id. at 554-55. The organizational appellants – Infowars, LLC; Free Speech Systems, LLC; Infowars Health, LLC; and Prison Planet TV, LLC – are unable to "demonstrate a specific personal and legal interest in the subject matter," *id.* at 544, of the contempt decision being appealed. It was not their depositions at issue in the contempt order – they were previously deposed in this action. And they simply were not the subjects of the contempt order, which

exclusively applied to Alex Jones. *See* DN 787, Mem. of Decision at 5. Neither are the organizational appellants able to show how they have been "specially and injuriously affected by the [contempt] decision." *In re Ava W.*, 336 at 555. They were not found to be in contempt and they were not ordered to pay any fines or otherwise sanctioned. *See Bruno v. Bruno*, 146 Conn. App. 214, 228 (2013) (when husband was found in contempt, wife, who was also party to proceedings, was not aggrieved by contempt order against husband because sanctions were "issued against [the husband] and [the wife] has not been legally aggrieved by that order. . . . [S]he cannot achieve standing by virtue of the fact that her husband may be financially and legally affected by the court's orders."); *cf. Richman v. Wallman*, 172 Conn. App. 616, 619 (2017) (plaintiff was "not aggrieved by any action of the court" when trial court did not rule on defendant's motion for contempt).

The organizational appellants are not aggrieved by the contempt order. Indeed, three of them are no longer defendants in this action. Therefore, the statutory requirements for appellate jurisdiction have not been met, and the Court lacks subject matter jurisdiction over their appeals.

B. The Automatic Stay under 11 U.S.C. § 362 Never Applied to Jones's Appeal

The automatic stay under 11 U.S.C. § 362 does not and has never applied to Alex Jones's appeal here. The Court is correct that "nothing in the 'notice and suggestion of bankruptcy,' filed in this Court on May 27, 2022, indicates that the defendant Alex Jones has filed for bankruptcy protection." AC 45401, 5/31/22 Order. The bankruptcy filings of the shell company debtors were, in the words of the U.S. Trustee, "classic bad faith filings" that "were filed to gain a tactical advantage in the Sandy Hook Lawsuits." Ex. E, Mot. of U.S.

Trustee to Dismiss, Bankr. Ct. SD TX Doc. No. 22-60020, ECF No. 50 at 2. Alex Jones, himself never filed for bankruptcy.

"It is well-established that stays pursuant to § 362(a) are limited to debtors and do not encompass non-bankrupt co-defendants." *Tchrs. Ins. & Annuity Ass'n of Am. v. Butler*, 803 F.2d 61, 65 (2d Cir. 1986) (collecting cases; holding that bankruptcy stay applied to general partnership that filed Chapter 11 bankruptcy petition but not to general partners, who had not filed for bankruptcy); *see, e.g.*, *Burritt Interfinancial Bancorporation v. Wood*, 33 Conn. App. 401, 408 (1994) ("the automatic stay provisions only extend to the debtor filing bankruptcy proceedings and not to non-bankrupt codefendants") (quoting *Cardinal Federal Savings & Loan Assn. v. Flugum*, 461 N.E.2d 932, 934 (Ohio App. 1983)); *Vernes v. State St. Mortg. Co.*, 1993 WL 171363, at *1 (Conn. Super. Ct. May 18, 1993) (Flynn, J.) ("Generally, the automatic stay does not apply to proceedings against non-debtor co-defendants."); *Lukas, Nace, Gutierrez & Sachs, Chartered v. Havens*, 245 B.R. 180, 182 (D.D.C. 2000) ("[T]he majority of circuits have held that non-debtor co-defendants may not ordinarily claim the protections of § 362(a)."); *see also U.S. Bank Nat'l Ass'n v. Crawford*, 333 Conn. 731, 752 (2019) ("the courts of this state have jurisdiction to determine whether the automatic stay provision, by its own terms, applies to a proceeding in state court").

Alex Jones did not file for bankruptcy and is not a "debtor" under 11 U.S.C. § 362(a). Moreover, the bankruptcy (in which Alex Jones was never a debtor) was dismissed on June 1, 2022 under a joint stipulation between the U.S. Trustee, the Subchapter V Trustee, and the shell company debtors. *See* Ex. H, Stip. and Agreed Order, Bankr. Ct. SD TX Doc. No. 22-60020, ECF No. 110. Without question, this appeal is not and never was stayed under 11 U.S.C. § 362.

C. Alex Jones's Failure to Prosecute this Appeal is an Independent Basis for Dismissal

Alex Jones has done nothing to prosecute this appeal since filing it on April 1. Because Mr. Jones was not a debtor in bankruptcy, the automatic stay did not apply to him and did not prevent him from prosecuting this appeal. Nevertheless, he chose to do nothing to advance this appeal. He has yet to even file the required documents under Practice Book § 63-4, which according to the Court's April 14 Order is reason for "the appeal [to] be dismissed." AC 45401, 4/14/22 Delinquency Order. Mr. Jones's failure to prosecute this appeal is an independent basis for dismissing this appeal.

"If a party shall fail to prosecute an appeal with proper diligence, the court may dismiss the appeal with costs." Prac. Bk. § 85-1. "The court must analyze the entire course of conduct and determine whether, under the circumstances, any good reason appears why the appellant should be permitted further to pursue his appeal." *Loomis*, 144 Conn. at 746. "The course of conduct contemplated by the phrase 'failure to prosecute with proper diligence' can, and usually does, consist of delay in filing papers." *Id*; *see also State v. Rodd*, 24 Conn. Supp. 283, 285 (Conn. Cir. Ct. 1963) ("the failure to complete the appeal was not merely a technical defect but a course of conduct unduly prolonging the appeal and amounting to a failure to prosecute with proper diligence").

Alex Jones has failed to take *any action* since April 1 to prosecute this appeal. The appeal should be dismissed.

IV. CONCLUSION

For all these reasons, the appeals of the four companies must be dismissed, and the appeal of Mr. Jones should be dismissed.

THE PLAINTIFFS-RESPONDENTS,

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CERTIFICATION

Pursuant to Rule of Appellate Procedure 62-7, I hereby certify that on this date, a true and correct copy of the foregoing has been delivered electronically to the last known e-mail addresses of each counsel of record for whom an e-mail has been provided, as indicated below; that the foregoing document has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and that the foregoing document complies with all applicable rules of appellate procedure.

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EXHIBIT A

UWY-X06-CV18-6046436-S	:	SUPERIOR COURT
ERICA LAFFERTY, ET ALS.,	:	COMPLEX LITIGATION
v.	:	AT WATERBURY, CONNECTICUT
ALEX EMRIC JONES, ET ALS.	:	MARCH 30, 2022
UWY-X06-CV18-6046437-S	:	SUPERIOR COURT
WILLIAM SHERLACH, ET AL.,	:	COMPLEX LITIGATION
v.	:	AT WATERBURY, CONNECTICUT
ALEX EMRIC JONES, ET ALS.	:	MARCH 30, 2022
UWY-X06-CV18-6046438-S	:	SUPERIOR COURT
WILLIAM SHERLACH, ET AL.,	:	COMPLEX LITIGATION
v.	:	AT WATERBURY, CONNECTICUT
ALEX EMRIC JONES, ET ALS.	:	MARCH 30, 2022

BEFORE THE HONORABLE BARBARA N. BELLIS, JUDGE

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THE COURT: All right. Good afternoon, everyone. This is Judge Bellis and we are on the record in the three consolidated Lafferty versus Jones matters. Lead docket number Waterbury 18-6046436.

Before I have counsel identify themselves for the record, I noted that there was no objection to the request from the media to tape the matter, so that is noted and that can commence and so I'll -- I have a few housekeeping matters of my own, but before I address that, I'll have plaintiffs' counsel please identify themselves for the record and then defense counsel.

ATTY. MATTEI: Good afternoon, Your Honor. Chris Mattei on behalf of the plaintiffs, joined by my colleagues, Alinor Sterling and Matt Blumenthal.

ATTY. ATKINSON: Good afternoon, Judge. Cameron Atkinson from Pattis and Smith on behalf of the Jones defendants.

ATTY. CERAME: Good afternoon, Your Honor. Mario Cerame of Brignole, Bush and Lewis for Genesis Communication Network, Incorporated.

THE COURT: Good afternoon, everyone. So my first housekeeping matter was, Attorney Cerame, I know you had one issue, but I wasn't sure if you wanted to address it today before we have our hearing or if you wanted to address it at the next status

conference which is fine with the Court. Did you have a preference?

ATTY. CERAME: Yes. I -- I was hoping to mark it off for now. Principally, the issue -- For two reasons. Number one, fact witness discovery is not done and so I don't think we can properly move it until fact witness discovery is done. I identified the reason for that in the motion. And secondarily, there is a hope that things will resolve, so I would --

THE COURT: All right.

ATTY. CERAME: -- just mark it off for now and I hope that that will -- that -- that we'll be able to proceed after fact witness discovery is done or withdraw, one or the other.

THE COURT: All right. So you're referring to your motion to withdraw appearance. So that will be on the very short list of items that we carry -- will carry over without addressing it. So I will keep that on the list and when you have a definitive answer, you'll let me know, but I understand that it won't be addressed at the next status conference.

ATTY. CERAME: Yes, Your Honor. Thank you.

THE COURT: So Attorney Mattei, are you arguing for the plaintiffs today?

ATTY. MATTEI: Yes, Your Honor.

THE COURT: And Attorney Atkinson, are you

arguing for the Jones defendants?

ATTY. ATKINSON: Yes, Your Honor.

THE COURT: And Attorney Cerame, I don't want to leave you out. That's always my fear. Are you going to look to be heard today on these issues or are you just a bystander?

ATTY. CERAME: I think I -- We do not have any skin in the game, Your Honor. I think it's best for us to be a bystander.

THE COURT: Okay. I'm not sure that it's necessary to say this, but I am going to say it anyway before I mute myself and let everyone take over. But this -- The argument today is on the plaintiffs' motion for sanctions regarding Mr. Jones' failure to appear for his depositions and then the Jones defendants' objections thereto. We're going to confine ourselves to that argument, so I'm not looking -- I don't want to hear anything about settlement offers. I don't want any -- You know, this isn't a press conference. This is formal argument of a motion, so I don't know that I needed to say it, but I want to confine ourselves to the proper argument that's before the Court today.

So my first question before I turn to Attorney Mattei and mute myself is: Attorney Mattei, are you presenting any new evidence today or is this solely argument?

ATTY. MATTEI: Your Honor, we don't intend to present any evidence during the hearing today. We would ask that the Court accept as evidence the exhibits that we've attached to our pleadings and also the exhibits that the Jones defendants attached to their pleadings in connection with this motion. That, we think, is the record and -- and should be sufficient for the Court to make any findings it needs to make.

THE COURT: All right. Well, it's -- The way I'm looking at it, it is already part of the Court record by way of being attached as exhibits to the motions.

And so, Attorney Atkinson, please, the same question to you: Are you presenting any new evidence today or are we proceeding on what's been submitted to date?

ATTY. ATKINSON: Your Honor, as far as what we're prepared to do today, we were proceeding on what's been submitted. I would just note for the record that -- that if you -- your intention is to take up the motion for contempt today, we would request additional law time to prepare witnesses for -- to decide whether we're preparing witnesses for that sort of a hearing.

THE COURT: That -- That is what is down today. What is down today, which is clear, is the

plaintiffs' motions -- motion for sanctions which request different relief including contempt and other items and your objections thereto, so I am prepared to proceed today because that is the clear agenda that we all had.

What I think would be helpful to the Court would be during plaintiffs' argument, if plaintiffs can outline the relief that they're seeking and then if the defendants can respond in kind to each of the different areas of relief that the plaintiff is raising with the Court. That would be helpful.

So at this point, I'm going to mute my microphone and turn the floor over to Attorney Mattei for his argument.

ATTY. MATTEI: Thank you, Your Honor. Your Honor, I think the Court is pretty well apprised of the facts that have been developed last week and in our pleadings here, so I don't want to belabor what was presented to the Court last week while we were in Texas preparing to take Mr. Jones' deposition. I -- I would just say that in terms of the orders that the Court entered last week directing Mr. Jones to appear for his deposition, both on March 23rd and then subsequently on March 24th, we believe that the record establishes that those orders were clear, direct; that counsel for the defendants acknowledged an understanding of those orders; and then later on

the record of Mr. Jones' deposition on March 24th conceded that Mr. Jones himself understood that those orders required him to attend his deposition and that he had elected not to.

I also -- And so it -- When it comes to the initial issue of whether the Court entered clear orders directing Mr. Jones to appear, we think that that has been clearly established. With respect to Mr. Jones' willful disregard of the Court's orders, we think the circumstances laid out in your pleadings establish that Mr. Jones did so willfully and there are several key factors, I think, to keep in mind. They're -- Number one being counsel's own concession on the record that Mr. Jones understood he was required to be at his deposition and had declined to show; the fact that the Court had given Mr. Jones multiple opportunities to present evidence to support a finding that he should be excused from attending; and that the Court had found he had failed to do that; and then of course Mr. Jones' appearance on his show over the course of March 21st, 22nd, by way of reporting on March 23rd, an apparent disregard of his own doctor's orders, if in fact, that's what his orders -- his doctors instructed him to do and clearly showing an ability to appear for deposition had he wished to comply with the Court's orders.

Getting to the -- the Court's request that we

focus on the relief that we're seeking, we are asking essentially for the Court to set conditions that will coerce Mr. Jones to appear for his deposition. What we want more than anything else is for Mr. Jones to sit for his deposition which is why the relief that we've requested is conditional on him doing that.

So for example, we've requested that the Court instruct the jury at the hearing in damages that it should draw an adverse inference against Mr. Jones on any issue relating to damages in light of his refusal to be deposed in this case and that the Court enter those findings, but withdraw that order should Mr. Jones appear for his deposition. We've asked the Court to order that Mr. Jones will not be permitted to present any evidence -- affirmative evidence at the hearing in damages should he fail to appear for his deposition. We've asked the Court to incarcerate Mr. Jones until he purges his contempt and we think that that type of sanction is required here given the -- the long trail of conduct Mr. Jones has engaged in during the course of this case in order to induce him to comply with the Court's order and we've asked the Court to impose a fine on a daily basis up until the time Mr. Jones purges his contempt, which fine will revert to Mr. Jones when he does submit to deposition.

So all of the relief that we've -- we've

requested, we think is in line with requiring Mr. Jones to purge himself of his contempt and in line with the -- the main goal here which is just to change Mr. Jones' calculus. It seems to us that Mr. Jones has made a deliberate decision that he would rather suffer the contempt of the Court than expose himself to deposition and so what we've tried to do in fashioning the relief we've requested is change that calculus to make it clear to Mr. Jones that the penalties that will accrue to him as a result of his further non-compliance are not worth it and that he should sit for deposition in order to avoid them.

So -- And then of course, Your Honor, we've asked for the -- the costs and fees incurred by the plaintiffs in their attempt to take Mr. Jones' deposition and then in their attempts to brief to the Court why he should be required to sit for his deposition last week and we've presented those costs and fees in our motion.

So those are the different components of the relief that we are seeking. Again, all of which we think are reasonably designed to compel Mr. Jones to comply with the Court's orders to sit for his deposition and reflect the seriousness of the violation that he -- that he committed last week.

You're muted, Judge.

THE COURT: Trying to be polite. I had a

question. Am I correct in that the specifics with respect to the attorney's fees and costs that you're claiming and the specifics with respect to the adverse inferences and preclusions of ever -- evidence, the specifics were not in your original motion, but in your reply brief that was filed today?

ATTY. MATTEI: Correct, Your Honor. Correct.

THE COURT: All right. So I think as a matter just of fundamental fairness that because costs and fees and the adverse inferences and preclusions of evidence were requested in the original motion that you filed and then requested in the new motion for sanctions, but there were no specifics, that I can expect Attorney Atkinson to address overall the topics of whether costs and fees should be awarded or whether there should be any adverse inference or evidence preclusions, but if the Court does believe either or both are in order, any specifics would be held to another day because that -- the specific information on the amounts and the details were not filed until your reply brief today and I don't think that's sufficient time for the Jones defendants to respond.

ATTY. MATTEI: One -- One note on the specifics, Your Honor, with respect to the factual findings, what -- what we tried to do in our reply was articulate factual findings relating to Mr. Jones'

non-appearance, but because the facts that will be presented at trial are not yet specifically known, what we've indicated is that or what we've asked for is for an adverse inference instruction specific to issues that are later presented at trial on the question of damages.

So in some ways, it's -- it's really impossible for us to articulate with -- with precision what inferences the jury would be asked to draw. We've kind of set out a category where we expect there to be multiple facts presented at trial, but anyway, I just wanted to explain why we did it that way.

THE COURT: All right. But in -- In any event, if Mr. Jones produces himself for a deposition, that issue on the adverse inferences and evidence preclusion would not need to be addressed, correct?

ATTY. MATTEI: Correct, Your Honor.

THE COURT: Did I interrupt you?

ATTY. MATTEI: That's all I have, Judge.

THE COURT: Oh, okay.

ATTY. MATTEI: Unless you have any questions.

THE COURT: I do not besides the ones that I asked.

Attorney Atkinson?

ATTY. ATKINSON: Yes, Your Honor. Thank you. If -- I would ask the Court's indulgence to bear with me as I have a bit of a shaky internet connection

today.

Your Honor, at the outset, Mr. Jones recognizes that the plaintiffs have a right to take his deposition. He recognizes that he has to sit for one in this case. He sat for three, by my account, in cases relating to the Sandy Hook litigation in Texas.

As our motions and papers have indicated, what has occurred here is he's ultimately listened to his doctor's advice. There are two critical points that I -- I think bear without hyperbolizing all of them in the world. First, initially and today, there was an uncontroverted record before this Court and there still is that Mr. Jones' doctors thought his conditions were serious enough to require emergency medical care and that they rendered precautionary advice that included a recommendation that he go to the emergency room immediately. Mr. Jones had --

THE COURT: Attorney Atkinson, I have a question in that regard. When you say uncontroverted record, you're not suggesting to the Court that the Court had to accept the evidence that was submitted as opposed to evaluating the evidence to determine if it was credible, genuine, reasonable, and the like?

ATTY. ATKINSON: Not at -- at all, Your Honor. I'm not in any way suggesting to you not to do your job as a judge. That -- That would be crazy, in my view. What I am telling -- suggesting to you is --

is what has been presented to you shows without a shadow of a doubt that Mr. Jones' doctors, the people that he has sought his medical attention from, were making these recommendations and that that kind of leads into where I -- where I was going.

Mr. Jones had no desire to go to the emergency room and I think most of us would share his lack of enthusiasm for going to the emergency room. What we had happen here was it took some serious persuading for him to recognize the seriousness of his condition, to follow his doctor's advice to avoid stress until they cleared him to incur it again.

Second -- The second point that I think bears emphasizing is Mr. Jones has never sought to indefinitely postpone his deposition or to escape it entirely in this case. All he sought is to postpone it temporarily until his doctors cleared him to sit for it. A deposition is a stressful undertaking and with all due courtesies to my adversaries' accolades, they are experienced attorneys of the bar. They've had a long -- long and storied careers. It's a stressful undertaking to go through two consecutive days of depositions --

THE COURT: So Attorney Atkinson, I hear what you're saying. I truly do. On the one hand, though, you're telling me that he sat for depositions in the past so he -- it's not like he's a neophyte at

depositions and there was nothing in the record to suggest either that the doctor that said don't attend the deposition even knew what a deposition was and there was nothing -- no evidence that was submitted from Mr. Jones or from anyone else that said it would be stressful or that he found it stressful or that the stress would exacerbate or endanger his health.

I just want to make sure that we have a clear record. I hear what you're saying though. I do. Continue.

ATTY. ATKINSON: And I -- I -- I think that goes to where I'm heading, Your Honor, is -- and I -- I don't mean to belabor the point or challenge your earlier statement, but this is the reason why we stated in our motion papers that Mr. Jones does not waive his rights under Quin -- the Quin -- the Cooley case to have an opportunity to present evidence as to these issues.

Again, I'm not going to challenge your ruling on that, but I -- I do want to make the record clear as to that. This Court should not hold Mr. Jones in contempt.

He -- There was a carveout to Your Honor's order of if he experienced escalating symptoms that required the need -- required him to be hospitalized, that he would not need to attend his deposition. As I --

THE COURT: So let me stop you there, Attorney Atkinson. I don't -- No evidence was submitted to the Court after that order. There's no evidence whatsoever that there were -- and I believe my exact language was escalating symptoms such that he was hospitalized because, of course, it would be unreasonable for the Court to order anyone to attend a deposition when a medical professional -- a valid medical professional actually admitted him to the hospital, but I never was given any evidence that suggested he had escalating symptoms such that he was hospitalized and that was the only carveout. I think we would all agree that it would be not a good thing to -- to require someone who's hospitalized to attend a deposition.

ATTY. ATKINSON: I --

THE COURT: Do you understand differently? Do you understand that there was actual evidence submitted to the Court that he developed escalating symptoms such that he was hospitalized?

ATTY. ATKINSON: No, Your Honor, and what -- not -- again, not to belabor the point, but the -- this is why we believe additional time is necessary. The -- The plaintiffs' motion for contempt was filed on a Friday. It's incredibly hard to gather evidence in three to four days and we would -- we would submit that alone is enough for a reason for more time to

enable us to determine whether such evidence exists that we -- in a form that we can present it to you.

It's -- In -- In our view, the Court's orders created a difficult choice for Mr. Jones. He was advised that if he incurred stress, that the consequences to his health could prove disastrous. While we freely concede he did not listen to the initial recommendations that his doctors made and, as I stated earlier, it took some persuading to get him to take this seriously, he ultimately did listen to his doctor's directives. The Court's order put him in an extraordinary difficult -- extraordinarily difficult position in that --

THE COURT: Attorney Atkinson, can I --

ATTY. ATKINSON: -- in that --

THE COURT: Can I please get back to an earlier point that you made with respect to the submitting additional evidence? So this hearing today was scheduled one week ago. It was scheduled one week ago today. I never received any motion for continuance, formally or informally, from any party indicating that more time was needed to arrange for witness testimony or other -- other evidence. If I had, I would have ruled on it.

So I just want to make sure the record is clear on that. And I did notice, much to my surprise, and I was delighted that the defendants' briefs, which

were due yesterday at 10 o'clock, were actually filed a full day early, so the briefs were --

ATTY. ATKINSON: Your Honor, that --

THE COURT: -- early. I was then hoping that plaintiffs' counsel would file theirs early, but they just made their deadline, but continue with your argument.

ATTY. ATKINSON: Your Honor, that may have been due to me misreading the deadline for the briefs and I may have inadvertently moved it up a day earlier. I can represent with full confidence to the Court that I was working as if the deadlines for the brief were the ten -- 10 o'clock before I submitted it.

THE COURT: All right. Well, you did a terrific job and I think we all probably worked over the weekend, but in any event, the deadline was actually yesterday, but -- for -- for the brief and again, no continuance request, but I did -- I did interrupt you and I'll give you as much time as you need, so continue.

ATTY. ATKINSON: Thank you, Your Honor. Turning to -- So just to wrap up, we -- we believe the Court should not hold Mr. Jones in contempt, but if you decide to hold him in contempt, the -- the first -- the most important consideration that we would ask you to take into account is not to issue an arrest warrant for Mr. Jones. It is clear, at least before

-- before -- in the record before you, in our view, that Mr. Jones has experienced some health problems. We would submit that issuing an arrest warrant for Mr. Jones procuring his incarceration would only serve to exacerbate those health concerns and that alone should counsel against the issuance of that -- that warrant.

And also, as I stated earlier, Mr. Jones recognizes that he must give a deposition in this case. He recognizes that he must sit for one. An arrest warrant would be a step -- would be a drastic step towards procuring his attendance.

With respect to sanctions as to what -- what -- pardon me, Your Honor. I'm consulting my notes for a second. With respect to the adverse inferences, Your Honor, if he doesn't depose, I think that's a bit premature at this point. In terms of the denial of an opportunity to present any evidence at trial, it is -- in our view, would raise a due process concern of sorts there. We believe that, if anything, an order from this Court and the escalating fines are sufficient to pro -- procure Mr. Jones' attendance.

And then finally, Your Honor, I did want to address the -- in terms of just generally not the specific -- the specifics, but in terms of attorney's fees and costs, I believe we cited the Berzins case in our motion papers where you must make a finding

that he has acted -- Mr. Jones has acted in bad faith. Again, relying on the fact that Mr. Jones was getting -- was listening to his doctors. He heeded his doctors, et cetera. He's not sought to permanently delay or escape his deposition in this case and he forwent his deposition pending the results of further medical tests.

Given the fact that he just went through a remarkable pandemic where that -- we have all been dependent on expert's advice, doctor's advice as to who is at risk for what and we've deferred to those recommendations, we would submit that the same wise course of conduct here was to defer to that and it was not an action taken in bad faith.

And with that, unless Your Honor has further questions for me, I will rest on the papers.

THE COURT: I do not. Thank you, Attorney Atkinson.

Attorney Mattei?

ATTY. MATTEI: Just briefly in response, Your Honor. First, my own omission, I neglected to mention that among the sanctions that we're seeking is that should Mr. Jones appear for his deposition, that he be required to appear in Connecticut and we raised that in our initial motion and then again in our reply. The -- At least in their papers, the defendants did not object to that and so we would ask

that when the Court orders his deposition, it do so in Connecticut.

Just in response to a couple of the points from Attorney Atkinson, one, on the claim that incarceration at this point would only exacerbate Mr. Jones' health issues, whatever they may be, there is no evidence in the record as to what his current health status is other than what we presented to the Court as being drawn from his March 25th broadcast in which we cited to his broadcast and his claim that he feels like a new person after whatever purported health scare he claimed to have had brought about by a sinus blockage. So there is no evidence that has been presented despite ample opportunity by the defendants to suggest that incarceration pending his deposition would exacerbate any health problems.

I don't want to relitigate the evidence that was previously presented to the Court on his medical issues. The Court has reviewed the letter and the affidavits that were submitted by Doctor Marble and Doctor Offutt and found them wanting, found the initial letter submitted by Doctor Marble to -- to not be credible evidence justifying Mr. Jones' excusal, so as far as we're concerned, the Court has already made the findings it needs to make with respect to the excuses that were proffered by -- by Mr. Jones and -- and Your Honor, I think that's all I

have in -- in reply to Attorney Atkinson. Thank you.

THE COURT: Attorney Atkinson, I'm going to give you a brief opportunity to respond, although I normally wouldn't, to argue again if you want on the issue of the location of the deposition. It was clear to me that in all of the plaintiffs' moving papers they were looking for the deposition to take place in Connecticut at their offices and also, I -- I'm somewhat surprised that I -- I actually thought that you -- whoever was arguing for Mr. Jones today would come in and make some kind of offer, you know, to the Court, don't -- we don't want sanctions; we're willing to sit for a deposition on Monday or Friday.

Is that -- So if you want to address either or both of those issues, you have an opportunity to. If you don't, that's fine too. It's up to you.

ATTY. ATKINSON: Yes. I would -- I would love to, Your Honor. Mr. Jones is willing to sit for a deposition. We would ask both the Court and plaintiffs' counsel to take into consideration that he is unavailable during the first week of April and towards the end of April. I can reveal, as I am authorized to reveal, that at the end of April he will be engaged in trial prep for a case occurring in Texas. We would offer to make him available the week of April 11th for a deposition if the Court orders it.

With respect to the issue of him appearing in Connecticut, that would certainly be within the -- the Court's province to order. We -- We obviously understand that. We obviously understand that it would present a burden to Mr. Jones to travel here and one of the considerations in specific -- specifically that we would raise is to Mr. Jones. And I am a bit reluctant to put this on the record, but we understand that plaintiffs' counsel enforces a fairly strict Covid protocol at their offices including the wearing of masks, et cetera, something that Mr. Jones is not willing to do and we would ask that to be taken into consideration as well.

I believe that -- that's all the issues that you were giving me an opportunity to address, Your Honor. If I missed anything, feel free to remind me.

THE COURT: Thank you.

All right. So I'm going to order a transcript of the following remarks and when it is prepared, I will sign it and place it in the file.

So with respect to depositions in general, under our rules of practice, particularly Practice Book Section 13-29 Subsection (c) Subsection (2), the plaintiffs were not required to subpoena Mr. Jones. The plaintiffs properly issued a notice of deposition on Mr. Jones, a defendant, which notice compelled him to appear for a deposition in the county he resides

or within 30 miles of his residence and that was done properly.

On Tuesday, March 22nd, the Court, after argument on the record, denied the Jones defendants' motion for protective order that had been filed earlier that day and that had asked the Court to postpone Mr. Jones' depositions which were scheduled to take place on Wednesday the 23rd and Thursday the 24th. The Jones defendants were given an immediate opportunity to argue their motion the same day it was filed and both the evidence that was submitted and the argument that was made indicated that Mr. Jones was remaining at home under his doctor's supervision when, in fact, he was working at his studios and broadcasting his show.

Additionally, the Court painstakingly explained on the record that its in-camera review evaluating the doctor's note submitted by the Jones defendants revealed that the note fell far short. Despite that ruling, Mr. Jones did not appear for his deposition on Wednesday, March 23rd.

In denying the Jones defendants' motion, the Court clearly stated that while the logistics of the depositions were left to the parties, the parties could consider having Mr. Jones' physician on the premises during the deposition.

On Wednesday, March 23rd, following the filing

of the plaintiffs' motion for order, which was filed that day, and the Jones defendants' objection, which was also filed that day, the Court, again on the record after a hearing from counsel, ordered Mr. Jones to appear for his deposition on Thursday, March 24th.

Despite these rulings from the Court, Mr. Jones did not appear for his deposition on Wednesday, March 23rd and he did not appear for his deposition on Thursday, March 24th. Immediately following the hearing on the record on March 23rd, the Court also ordered Mr. Jones, in writing, to appear for his March 24th deposition stating, "The defendant, Alex Jones, is ordered to produce himself tomorrow for his duly noticed deposition as he has not submitted additional evidence for the Court to evaluate on the issue of his alleged medical conditions."

Additionally, after the parties filed briefs relating to the plaintiffs' request for a capias, the Court issued a second written order on March 23rd declining to issue a capias at that time, indicating that Mr. Jones would be in contempt of the Court's order should he not appear for his deposition on March 24th and setting a briefing schedule with respect to the other sanctions requested by the plaintiff.

Furthermore, after an additional motion for

protective order was filed by the Jones defendants at the end of the day on Wednesday, March 23rd, the Court, after evaluating the motions and affidavits, denied the motion in writing and made clear that the Court-ordered deposition was to proceed the next day, although he would be excused from the deposition if he was hospitalized. No such evidence of hospitalization or, in fact, any other evidence has been submitted to the Court, although the motions that have been filed are replete with references to Mr. Jones either broadcasting live from his studio, recording shows, or calling into shows during the time period in question.

So while the parties and counsel abided by the Court-ordered deadlines with respect to the filing of their briefs, Mr. Jones, as I said, did not appear for his deposition on Thursday, March 24th.

So this hearing today is dealing with the plaintiffs' motions relating to Mr. Jones' failure to appear for his depositions on March 23rd and March 24th despite all these Court orders and Jones defendants' objections thereto.

Now, I have to note, at this point we're maybe 16 or 17 weeks away from jury selection and Mr. Jones has not even been deposed. So we're four years into this case and the Court has repeatedly entered new deadlines for witness depositions and the newest

deadline, as far as I know, is April 8th in this long series of modifying scheduling orders for depositions.

I have to say that due to these repeated extensions, the several prior trial dates, as well as the age of the case, the existing trial date, which is jury selection on August 2nd and evidence on September 1st, is a firm trial date and parties and counsel should plan accordingly.

The Court's authority here is rooted not only in Practice Book Section 13-14, but the Court also has inherent sanctioning power. With respect to the issue of contempt, the Court finds by clear and convincing evidence that the defendant, Alex Jones, willfully and in bad faith violated without justification several clear Court orders requiring his attendance at his depositions on March 23rd and March 24th. That is, the Court finds that Mr. Jones intentionally failed to comply with the orders of the Court and that there was no adequate factual basis to explain his failures to obey the orders of the Court.

Now, while the Court has adjudicated Mr. Jones in contempt, Mr. Jones himself has the ability to purge the contempt and Mr. Jones is on notice that he has the ability to purge the contempt and the Court has the power to reduce the fines that it is going to impose once the contempt has been purged as follows:

The contempt will be purged when Mr. Jones completes two full days of depositions at the office of plaintiffs' counsel in Bridgeport. Mr. Jones is to pay conditional fines of $25,000 each weekday beginning on Friday, April 1st, increasing by $25,000 per weekday payable to the Clerk of the Court in Waterbury and it will be suspended on each day that Mr. Jones successfully completes a full day's deposition where Mr. Jones has given all counsel a minimum of 24 hours' notice of his availability to sit for that particular deposition.

So for example, if Mr. Jones' counsel this afternoon informs counsel that Mr. Jones will sit for his deposition on Friday -- that's sufficient notice to the parties, that's 24 hours -- and if he successfully appears and sits for his deposition on Friday, there will be no fine.

Another example: If Mr. Jones' counsel this afternoon informs counsel that Mr. Jones will sit for his deposition on Tuesday, April 5th and he does so successfully, the fine will be $25,000 for this Friday, April 1st. There will be no fine on Saturday or Sunday and there will be a $50,000 fine on Monday for a total fine of $75,000 to that point and so on.

The last day for the fines will be April 15th and that then gives Mr. Jones an opportunity to purge the contempt by producing himself for two full days

of deposition by April 15th. The Court recognizes that this fine, while a conditional fine, is also coercive, but finds that it is reasonable and necessary in this matter and again points out that Mr. Jones himself has the opportunity to complete his deposition and then request reimbursement of the fines that the Court has imposed.

The Court declines to issue a capias, although it recognizes that the plaintiffs may pursue that with the Texas Courts if they so desire.

The Court also finds that the plaintiffs are entitled to fees and costs in connection with the cancelled depositions that was requested in earlier motions and the details of which were provided in the briefs that were just filed today, so as I indicated earlier, for that reason, the Court will address the amount of the fees and costs that will be awarded at the next hearing giving the Jones defendants adequate time to respond.

It is clear, however, that the plaintiffs here simply want and are entitled to the deposition of Mr. Jones and that Mr. Jones has continued to attempt to deliberately disregard the Court's orders and attempts to manipulate the Court process. While paying the fees and costs will reimburse the plaintiffs for the costs incurred in attempting to procure Mr. Jones' deposition, it is not a substitute

for his testimony. As such, should Mr. Jones not complete his two full days of depositions by April 15, the Court finds that the preclusion of evidence, that is, preventing Mr. Jones from offering evidence which would include calling witnesses, cross-examining witnesses, and the like, and adverse inferences, that is, the establishment of certain facts adverse to the Jones defendants, would be an order as a remedy for non-compliance, the extent of which is a very significant issue and would require extensive briefing and argument from counsel.

That is not something, hopefully, that will have to be addressed because Mr. Jones has the ability by April 15th to purge himself of the contempt and avoid any issue, preclusion, or adverse inferences. So if and when that becomes an issue, if he has not submitted to his two full days of deposition by April 15th, then the Court will set up a briefing schedule to address issue preclusion and adverse inferences. So really, it will be up to Mr. Jones.

All right. So I think that concludes our business for today.

Our next status conference, Mr. Ferraro, do you have that date handy? I know that we have to deal with a motion to seal on that date.

THE COURT OFFICER: That would be April 20th, Your Honor.

THE COURT: All right. It will be here before you know it and then we'll have a good idea at that point, since it's five days after our deadline, what's in store.

All right. Thank you, counsel. I want to thank you, and I mean this, for your very thorough and helpful briefs and your professional argument today.

ATTY. MATTEI: Your Honor, thank you. May I just raise one unrelated issue? We filed a motion on consent for a commission to issue with respect to the deposition of Rob Dew and since our next status conference isn't until the 20th, I just wanted to put that on the Court's radar because I don't expect -- in fact, I know there won't be any responsive briefing because all parties consent, but I just wanted to focus the Court on it.

THE COURT OFFICER: Your Honor, I believe you granted that.

ATTY. MATTEI: Oh, has it been granted? Okay.

THE COURT OFFICER: I believe so.

ATTY. MATTEI: Thank you. I apologize.

THE COURT OFFICER: Let me check to be sure because --

THE COURT: I did. I granted it last night.

ATTY. MATTEI: I hadn't seen it. Thank you, Your Honor.

THE COURT: I think -- You're not the only ones

that have been working on the weekends and at night on this --

ATTY. MATTEI: Oh, I know.

THE COURT: -- just so you know, so --

ATTY. MATTEI: I know.

THE COURT: -- Attorney Atkinson, I hear what you're saying about having to file your brief. We've all been working hard.

ATTY. MATTEI: Thank you, Your Honor.

ATTY. ATKINSON: Your Honor, on that note, with respect to any contesting of the fees and costs, would -- are we allowed to file a written submission as to that?

THE COURT: Absolutely. You can --

ATTY. ATKINSON: Thank you. We'll have that in before April 20th and hopefully well in advance, Your Honor.

THE COURT: Okay. Thank you for that.

And we are adjourned. Thank you, counsel.

ATTY. MATTEI: Thank you.

ATTY. ATKINSON: Thank you, Your Honor.

ATTY. CERAME: Thank you, Your Honor.

(The matter concluded.)

* * *

UWY-X06-CV18-6046436-S	:	SUPERIOR COURT
ERICA LAFFERTY, ET ALS.,	:	COMPLEX LITIGATION
v.	:	AT WATERBURY, CONNECTICUT
ALEX EMRIC JONES, ET ALS.	:	MARCH 30, 2022
UWY-X06-CV18-6046437-S	:	SUPERIOR COURT
WILLIAM SHERLACH, ET AL.,	:	COMPLEX LITIGATION
v.	:	AT WATERBURY, CONNECTICUT
ALEX EMRIC JONES, ET ALS.	:	MARCH 30, 2022
UWY-X06-CV18-6046438-S	:	SUPERIOR COURT
WILLIAM SHERLACH, ET AL.,	:	COMPLEX LITIGATION
v.	:	AT WATERBURY, CONNECTICUT
ALEX EMRIC JONES, ET ALS.	:	MARCH 30, 2022

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Waterbury at Waterbury, Connecticut, before the Honorable Barbara N. Bellis, Judge, on the 30th day of March, 2022.

Dated this 30th day of March, 2022 in Waterbury, Connecticut.

_____
Jocelyne Greguoli
Court Recording Monitor

EXHIBIT B

NO. X06-UWY-CV-18-6046436S	)	SUPERIOR COURT
ERICA LAFFERTY, ET AL,	)	COMPLEX LITIGATION DOCKET
VS.	)	AT WATERBURY
ALEX EMRIC JONES, ET AL,	)	JUNE 23, 2021
NO. X-06- UWY-CV18-6046437-S	)	SUPERIOR COURT
WILLIAM SHERLACH,	)	COMPLEX LITIGATION DOCKET
VS.	)	AT WATERBURY
ALEX EMRIC JONES, ET AL.	)	JUNE 23, 2021
NO. X06-UWY-CV-18-6046438S	)	SUPERIOR COURT
WILLIAM SHERLACH, ET AL.,	)	COMPLEX LITIGATION DOCKET
VS.	)	AT WATERBURY
ALEX EMRIC JONES, ET AL.	)	JUNE 23, 2021

CONFIDENTIAL

ORAL AND VIDEOTAPED DEPOSITION OF

MICHEAL ZIMMERMANN

JUNE 23, 2021

ORAL AND VIDEOTAPED DEPOSITION OF MICHEAL ZIMMERMANN, produced as a witness at the instance of the PLAINTIFF, and duly sworn, was taken in the above-styled and -numbered cause on JUNE 23, 2021, from 9:00 a.m. to 10:30 a.m., before Rosalind

Dennis, Notary in and for the State of Texas, reported by machine shorthand, appearing remotely from Dallas, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

A P P E A R A N C E S

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ALSO PRESENT:
Joel Raguso - Videographer

Q. And you are prepared today to testify as a corporate representative for Infowars, LLC on all the topics listed in this notice of deposition?

A. I am.

Q. Has Infowars, LLC produced documents in this case?

A. Not to my understanding.

Q. So is that a no?

A. That's a no.

Q. When was Infowars, LLC registered?

A. Infowars, LLC was registered on November 15th, 2007.

Q. Okay. And what is the business purpose of Infowars, LLC?

A. Infowars, LLC has no business purpose.

Q. Why was it created?

A. I do not know.

[redacted]

NO. X06-UWY-CV-18-6046436S	)	SUPERIOR COURT
	)	
ERICA LAFFERTY, ET AL,	)	COMPLEX LITIGATION DOCKET
	)	
VS.	)	AT WATERBURY
	)	
ALEX EMRIC JONES, ET AL,	)	JUNE 23, 2021
	)	
_____	)	
	)	
NO. X-06- UWY-CV18-6046437-S	)	SUPERIOR COURT
	)	
WILLIAM SHERLACH,	)	COMPLEX LITIGATION DOCKET
	)	
VS.	)	AT WATERBURY
	)	
ALEX EMRIC JONES, ET AL.	)	JUNE 23, 2021
	)	
_____	)	
	)	
NO. X06-UWY-CV-18-6046438S	)	SUPERIOR COURT
	)	
WILLIAM SHERLACH, ET AL.,	)	COMPLEX LITIGATION DOCKET
	)	
VS.	)	AT WATERBURY
	)	
ALEX EMRIC JONES, ET AL.	)	JUNE 23, 2021

REPORTER'S CERTIFICATION

DEPOSITION OF MICHEAL ZIMMERMANN

JUNE 23, 2021

I, Rosalind Dennis, Notary in and for the State of Texas, hereby certify to the following:

That the witness, MICHEAL ZIMMERMANN, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the original deposition was delivered to MR. BLUMENTHAL.

That the amount of time used by each party at the deposition is as follows:

MR. BLUMENTHAL .....00 HOUR(S):51 MINUTE(S)
MR. WOLMAN .....00 HOUR(S):025 MINUTE(S)

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

Mr. Blumenthal Attorney for the Plaintiff.

Mr. Wolman Attorney for the Defendant.

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this 5th day of July, 2021.

Rosalind Dennis

ROSALIND DENNIS
Notary in and for the
State of Texas
Notary: 129704774
My Commission Expires: 10/8/2022
US LEGAL SUPPORT
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Suite 120
Dallas, Texas 75231
214-741-6001
214-741-6821 (FAX)
Firm Registration No. 343

EXHIBIT C

NO. X06-UWY-CV-18-6046436S	)	SUPERIOR COURT
ERICA LAFFERTY, ET AL,	)	COMPLEX LITIGATION DOCKET
VS.	)	AT WATERBURY
ALEX EMRIC JONES, ET AL,	)	JUNE 23, 2021
NO. X-06- UWY-CV18-6046437-S	)	SUPERIOR COURT
WILLIAM SHERLACH,	)	COMPLEX LITIGATION DOCKET
VS.	)	AT WATERBURY
ALEX EMRIC JONES, ET AL.	)	JUNE 23, 2021
NO. X06-UWY-CV-18-6046438S	)	SUPERIOR COURT
WILLIAM SHERLACH, ET AL.,	)	COMPLEX LITIGATION DOCKET
VS.	)	AT WATERBURY
ALEX EMRIC JONES, ET AL.	)	JUNE 23, 2021

CONFIDENTIAL

ORAL AND VIDEOTAPED DEPOSITION OF

MICHEAL ZIMMERMANN

JUNE 23, 2021

ORAL AND VIDEOTAPED DEPOSITION OF MICHEAL ZIMMERMANN, produced as a witness at the instance of the PLAINTIFF, and duly sworn, was taken in the above-styled and -numbered cause on JUNE 23, 2021, from 10:45 a.m. to 11:41 a.m., before

Rosalind Dennis, Notary in and for the State of Texas, reported by machine shorthand, appearing remotely from Dallas, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

A P P E A R A N C E S

FOR THE PLAINTIFFS:

CHRISTOPHER M. MATTEI, ESQ.
MATTHEW S. BLUMENTHAL, ESQ.
KOSKOFF KOSKOFF & BIEDER, PC
350 Fairfield Avenue
Bridgeport, Connecticut 06604
Cmattei@koskoff.com
mblumenthal@koskoff.com
(203) 336-4421

FOR THE DEFENDANTS:

JAY MARSHALL WOLMAN, ESQ.
RANDAZZA LEGAL GROUP
100 Pearl Street
14th Floor
Hartford, Connecticut 06103
jmw@randazza.com
(702) 420-2001

ALSO PRESENT:
Joel Raguso - Videographer

received by Infowars Health, LLC?

[redacted]

Q. Does Infowars Health, LLC have any employees?

A. It does not.

Q. Has it ever had any employees?

A. It has not.

[redacted]

[redacted]

Q. Has it ever had any office space?

A. It has not.

[redacted]

Q. Has Infowars Health, LLC ever had any contracts with any other person or entity?

A. It has not.

Q. Has -- apart from receiving money through the bank account that you mentioned from Youngevity, has

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ALEX EMRIC JONES, ET AL,	)	JUNE 23, 2021
	)	
_____	)	
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VS.	)	AT WATERBURY
	)	
ALEX EMRIC JONES, ET AL.	)	JUNE 23, 2021

REPORTER'S CERTIFICATION

DEPOSITION OF MICHEAL ZIMMERMANN

JUNE 23, 2021

I, Rosalind Dennis, Notary in and for the State of Texas, hereby certify to the following:

That the witness, MICHEAL ZIMMERMANN, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the original deposition was delivered to MR. BLUMENTHAL.

That the amount of time used by each party at the deposition is as follows:

MR. BLUMENTHAL .....00 HOUR(S):48 MINUTE(S)
MR. WOLMAN .....00 HOUR(S):00 MINUTE(S)

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

Mr. Blumenthal Attorney for the Plaintiff.

Mr. Wolman Attorney for the Defendant.

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this 5th day of July, 2021.

Rosalind Dennis

ROSALIND DENNIS
Notary in and for the
State of Texas
Notary: 129704774
My Commission Expires: 10/8/2022
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EXHIBIT D

NO. X06-UWY-CV-18-6046436S	)	SUPERIOR COURT
ERICA LAFFERTY, ET AL,	)	COMPLEX LITIGATION DOCKET
VS.	)	AT WATERBURY
ALEX EMRIC JONES, ET AL,	)	JUNE 23, 2021
NO. X-06- UWY-CV18-6046437-S	)	SUPERIOR COURT
WILLIAM SHERLACH,	)	COMPLEX LITIGATION DOCKET
VS.	)	AT WATERBURY
ALEX EMRIC JONES, ET AL.	)	JUNE 23, 2021
NO. X06-UWY-CV-18-6046438S	)	SUPERIOR COURT
WILLIAM SHERLACH, ET AL.,	)	COMPLEX LITIGATION DOCKET
VS.	)	AT WATERBURY
ALEX EMRIC JONES, ET AL.	)	JUNE 23, 2021

CONFIDENTIAL

ORAL AND VIDEOTAPED DEPOSITION OF

MICHEAL ZIMMERMANN

JUNE 23, 2021

ORAL AND VIDEOTAPED DEPOSITION OF MICHEAL ZIMMERMANN, produced as a witness at the instance of the PLAINTIFF, and duly sworn, was taken in the above-styled and -numbered cause on JUNE 23, 2021, from 12:15 p.m. to 1:19 p.m., before Rosalind

Dennis, Notary in and for the State of Texas, reported by machine shorthand, appearing remotely from Dallas, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

A P P E A R A N C E S

FOR THE PLAINTIFFS:

CHRISTOPHER M. MATTEI, ESQ.
MATTHEW S. BLUMENTHAL, ESQ.
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JAY MARSHALL WOLMAN, ESQ.
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100 Pearl Street
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Hartford, Connecticut 06103
jmw@randazza.com
(702) 420-2001

ALSO PRESENT:
Joel Raguso - Videographer

information that would tend to indicate that the Sandy Hook shooting did not include 20 children being killed and six educators being killed?

MR. WOLMAN: Objection.

A. It doesn't hold any information about anything, that included.

Q. (BY MR. BLUMENTHAL) So is that a no?

A. That's a no.

Q. And has Prison Planet TV, LLC ever had access to any information that would tend to indicate that the Sandy Hook shooting involved crisis actors?

MR. WOLMAN: Objection.

A. Prison Planet TV, LLC does not have access to any information, no.

Q. (BY MR. BLUMENTHAL) So Prison Planet TV, LLC has no bases -- withdrawn.

All right. So does Prison Planet TV, LLC have employees?

A. It does not.

Q. Has it ever?

A. It has not.

[redacted]

Q. (BY MR. BLUMENTHAL) And Prison Planet TV, LLC directly and financially benefited from all programming on prisonplanet.tv, including Alex Jones Sandy Hook related programming?

MR. WOLMAN: Objection.

A. That's correct.

Q. (BY MR. BLUMENTHAL) What does Prison Planet mean?

A. The company has no knowledge of that.

Q. Has Prison Planet TV, LLC had any purpose since September of 2018 when the PayPal service ceased?

A. It has not.

[redacted]

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REPORTER'S CERTIFICATION

DEPOSITION OF MICHEAL ZIMMERMANN

JUNE 23, 2021

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That the original deposition was delivered to MR. BLUMENTHAL.

That the amount of time used by each party at the deposition is as follows:

MR. BLUMENTHAL .....00 HOUR(S):51 MINUTE(S)
MR. WOLMAN .....00 HOUR(S):04 MINUTE(S)

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Mr. Blumenthal Attorney for the Plaintiff.

Mr. Wolman Attorney for the Defendant.

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this 5th day of July, 2021.

Rosalind Dennis

ROSALIND DENNIS
Notary in and for the
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EXHIBIT E

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
KEVIN M. EPSTEIN, UNITED STATES TRUSTEE
REGION 7, SOUTHERN and WESTERN DISTRICTS OF TEXAS
JAYSON B. RUFF, TRIAL ATTORNEY
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

IN RE:	§	
INFOW, LLC *et al.*	§	**CASE NO. 22-60020**
	§	
	§	**CHAPTER 11 (Subchapter V)**
	§	**Jointly Administered**
DEBTORS.[1]	§	

MOTION OF THE UNITED STATES TRUSTEE
TO DISMISS DEBTORS' CHAPTER 11 CASES

TO THE HONORABLE CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE:

Kevin M. Epstein, the United States Trustee for Region 7 (the "U.S. Trustee"), respectfully moves to dismiss the Debtors' chapter 11 cases for cause pursuant to section 1112(b) of the Bankruptcy Code (the "Motion"), and represents as follows:

[1] The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are as follows: InfoW, LLC, f/k/a Infowars, LLC (6916) ("InfoW"), IWHealth, LLC f/k/a Infowars Health, LLC (no EIN) ("IWHealth"), Prison Planet TV, LLC (0005) ("Prison Planet"). The address for service to the Debtors is PO Box 1819, Houston, TX 77251-1819.

PRELIMINARY STATEMENT[2]

Debtors' cases should be dismissed for cause under section 1112(b)(1) because these are classic bad faith filings for two primary reasons: these cases serve no valid bankruptcy purpose and were filed to gain a tactical advantage in the Sandy Hook Lawsuits. The strategy employed here—filing bankruptcy for three non-operating members of a larger enterprise to channel and cap liability against the other, revenue-generating members of that enterprise and its owner using a bankruptcy subchapter designed to aid small, struggling businesses—is a novel and dangerous tactic that is abusive and undermines the integrity of the bankruptcy system. Bankruptcy, however, is intended to protect honest but unfortunate debtors who subject themselves and their assets to the supervision of the Court.

The Debtors' cases arise out of a series of lawsuits in Texas and Connecticut brought primarily by relatives of the 2012 Sandy Hook shooting victims (the "Sandy Hook Plaintiffs") seeking redress for harms arising out of statements made by Alex Jones and other employees of FSS asserting that the Sandy Hook shooting was a "false flag" hoax. According to the Debtors, they filed these cases to resolve the Sandy Hook Lawsuits (in which liability has already been established and all that remains are trials establishing damages) and other litigation claims and to pay such claims "in full."[3] But despite that these lawsuits arise from Alex Jones's and FSS's allegedly tortious, intentional conduct, neither filed for bankruptcy. Instead, three days before

---

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms below or as set forth *in Debtors' Emergency Motion for Order Authorizing Appointment of Russell F. Nelms and Richard S. Schmidt as Trustees of the 2022 Litigation Settlement Trust and Granting Related Relief*, Dkt. No. 6.

[3] Unfortunately, "payment in full" is inaccurate. Rather, after removing to federal court the cases that were imminently set for damages trials, Debtors intend to force a claims *estimation* proceeding to value the claims of the Sandy Hook Plaintiffs and cap the distribution they will receive on those claims. Thus, in an Orwellian use of language, when Debtors say "payment in full," what they actually mean is "payment of estimated damages." *See* LST ¶ 10(c).

filing these cases, and eight days before jury selection was to begin in Texas, Alex Jones transferred his ownership interests in the Debtor entities into a settlement trust and, without any input from creditors, he entered into a plan support agreement that provides the roadmap for resolution of the Debtors' cases—cases that will be funded solely by Alex Jones and FSS because the Debtors have no ability to do so.

Debtors did not file these cases to reorganize their businesses or to preserve or maximize the value of their assets for the benefit of their creditors. As their proposed CRO has admitted, these Debtors have *no* businesses and *no* assets from which they earn any income.[4] Nor were these cases filed to avoid a "race to the courthouse," yet another self-serving pretextual justification offered by Debtors. Indeed, the Sandy Hook Plaintiffs in both the Texas and Connecticut lawsuits have sought to dismiss these cases. Instead, this bankruptcy is designed to misuse the subchapter V cases of three non-operating companies to shield the assets of Alex Jones, FSS, and other entities owned or controlled by Alex Jones or Alex Jones's insiders (the "Alex Jones Enterprise") from their primary—and maybe only—creditors, the Sandy Hook Plaintiffs, with "Resulting Releases" for both Jones and FSS as the ultimate end game.[5] *See, e.g.*, Plan Support Agreement ("PSA"), § 7(b); Litigation Settlement Trust ("LST"), p. 2 (Recitals); ¶¶ 2.2 and 10.1(b). Although the Debtors have not yet filed a plan, the PSA and LST

[4] Based on statements elicited from Mr. Schwartz at the first hearing in these cases, it appears that he has recently discovered that one debtor, IWHealth, has rights to a royalty payment from which it may begin to earn $38,000 a month. Tr. April 22, 2022 at 43, 48-9.

[5] Moreover, this would allow Alex Jones and FSS to retain their assets that they could not otherwise retain had they themselves filed for bankruptcy. If Alex Jones were a debtor, he would not be able to discharge the claims of the Sandy Hook Plaintiffs because section 523(a)(6) excepts from discharge debts arising from willful and malicious injury. And both Alex Jones and FSS as debtors would be subject to section 1129(a)(7)'s best interest of creditors' test for plan confirmation, requiring full disclosure of the value of their assets and a showing that impaired, dissenting creditors are receiving at least as much as they would in a chapter 7 liquidation.

have set the table for these cases in a very particular way—and it is already apparent what type of meal we're going to get.[6] Dismissal is in the best interests of all creditors and the estates, and these cases should therefore be dismissed.

JURISDICTION, VENUE & CONSTITUTIONAL AUTHORITY TO ENTER A FINAL ORDER

1. The Court has jurisdiction to consider this matter under 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). Debtors assert that venue is proper in this district under 28 U.S.C. § 1408.

2. This Court has constitutional authority to enter a final order in this matter. If it is determined that the bankruptcy judge does not have the constitutional authority to enter a final order or judgment in this matter, the U.S. Trustee consents to the entry of a final order or judgment by this Court in this matter.

3. Kevin M. Epstein is the duly appointed U.S. Trustee for Region 7. The U.S. Trustee has standing to raise, appear and be heard on any issue in a case or proceeding under the Bankruptcy Code. 11 U.S.C. § 307.

4. The U.S. Trustee has a statutory duty to monitor the administration of cases commenced under the Bankruptcy Code, including seeking relief under section 1112(b) of the Bankruptcy Code. 28 U.S.C. § 586(a).

5. No committee has been appointed. Unless the Court determines there is cause for the appointment of a creditors' committee and orders the appointment of one, the U.S. Trustee is

[6] All references to the provisions of the LST and PSA herein are to the original versions of those documents as filed as exhibits to Dkt. No. 6. The U.S. Trustee understands that Debtors have filed revised versions of the PSA and LST. Nevertheless, it is the initial versions that evidence the Debtors' purpose in filing these cases. While the U.S. Trustee has not had a chance to digest these latest versions, it appears that these versions simply attempt to obfuscate what the earlier versions made clear—that the Debtors are using these cases to benefit Alex Jones and FSS, not the Sandy Hook Plaintiffs. The U.S. Trustee reserves his rights to supplement this Motion.

prohibited from soliciting and appointing a committee of unsecured creditors in subchapter V cases such as these. 11 U.S.C. § 1102(a)(3).

FACTUAL BACKGROUND

General Information

6. On April 17, 2022 (the "Petition Date") and April 18, 2022,[7] the Debtors filed chapter 11 voluntary petitions and elected to proceed under Subchapter V of chapter 11 on their respective Petitions.

7. On April 18, 2022, the Court entered the Order directing joint administration of the chapter 11 cases solely for procedural purposes. *See* Dkt. No. 8.

8. On April 18, 2022, the U.S. Trustee appointed Melissa Haselden as the Debtors' Subchapter V Trustee. *See* Dkt. Nos. 9 and 12.

The Debtors

9. The Debtors are holding companies for certain intellectual property assets. *See* Dkt. No. 6 at ¶ 7. Specifically, as their proposed Chief Restructuring Officer ("CRO") attests:

> Debtor's [sic] have no purpose other than to hold assets which may be used by other entities. They undertake no business activities, they do not sell, rent or lease to others anything. Their assets do not generate any income for them. They have no bank accounts and do not pay money to anyone for any reason. They have no debt or other liabilities other than those related to pending or potential litigation. For these reasons, they have no financial statements or books of account and they do not file income tax returns.

Dkt. No. 1 pp. 10-11 at ¶ 8. Based on information elicited from the proposed CRO, W. Marc Schwartz, IWHealth is also entitled to a royalty payment from Youngevity that for many years

[7] InfoW, LLC filed just before midnight on April 17, 2022, while IWHealth, LLC and Prison Planet TV, LLC's petitions were docketed shortly after midnight on April 18, 2022.

was paid directly to Alex Jones's personal bank account rather than IWHealth. Tr. April 22, 2022, 48-9.[8]

10. Each of the Debtors was previously located in Austin, Texas, prior to obtaining leases in Victoria, Texas, in April 2022. Tr. April 22, 2022, at 52-3.

11. Prior to April 14, 2022, Alex Jones was the 100% holder of the equity interests in the Debtors. Dkt. No. 6 at ¶ 9. The equity in each of the Debtors is now, as of three days before the Petition Date, wholly owned by a recently established Litigation Settlement Trust ("LST"). *Id.* at ¶¶ 9, 16-17. Alex Jones established the Trust on April 14, 2022, and funded the Trust with his equity interests in the Debtors and an initial funding amount from his "exempt personal assets." *Id.* at 16-17, Exhibit A (*Declaration of Trust*).

12. Alex Jones remains the 100% equity holder of FSS, through which Mr. Jones and others operate the so-called InfoWars website and related enterprises. *Id*. All the assets of FSS allegedly serve as collateral to repay obligations to PQPR Holdings, LLC ("PQPR"), a vendor to FSS. *Id.* at ¶ 8, n.1. PQPR is owned by Alex Jones's insiders.[9] Dkt. No. 17-6.

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[8] Transcript for April 22, 2022, Hearing is attached hereto as Exhibit A.

[9] In a lawsuit filed in Texas state court on April 6 asserting fraudulent conveyance claims against Jones, FSS, and PQPR, among others, plaintiffs alleged that PQPR filed a UCC Financing Statement claiming a security interest in essentially everything FSS owns only after the Sandy Hook Lawsuits had considerably advanced. *Heslin v. Jones*, No. D-1-GN-22-001610 (200th Dist. Tex.) Petition, ¶ 33 (filed April 6, 2022). According to plaintiffs, "[t]he [$54 million] supposed debt began accruing years earlier as part of an arrangement where Free Speech Systems sells PQPR's products on the InfoWars website. Under this alleged arrangement, PQPR was to be reimbursed for the costs of the products and receive 70% of the sales revenue while Free Speech Systems retained the other 30%. In practice, however, Free Speech Systems supposedly kept 100% of the revenue for about seven years and didn't pay for the goods PQPR provided—to the point where a $54 million debt had accumulated. All the while, PQPR not only supplied Free Speech Systems with more products to sell but also paid Free Speech Systems millions of dollars a year to advertise on the InfoWars website. PQPR still supplies the Alex Jones Enterprise with products to sell and pays for advertising on the website." *Id*. Plaintiffs further allege that within weeks of the default judgments, as part of a scheme to render Jones and FSS "judgment proof," FSS began transferring to PQPR "between $11,000 per day and $11,000 per week plus 60–80% of Free Speech Systems' sales revenue—supposedly just to pay the interest on the alleged $54 million debt." *Id*. at ¶ 36.

13. Neither Jones, FSS, nor PQPR have filed bankruptcy petitions.

14. The list of creditors attached to each of the Debtors' petitions contain the names of the relatives of some of the 20 children and six educators killed in the 2012 Sandy Hook school shooting. *See, e.g.,* Dkt. No. 1 at pp. 6-7. Their claims are classified as "disputed" and "unliquidated." *Id.* No other creditors are listed. *See Id.*

The Pending Litigation

15. In 2018, the Sandy Hook Plaintiffs filed suits in Texas and Connecticut (collectively, the "Sandy Hook Lawsuits") against Jones, FSS, and certain of the Debtors.[10] Dkt. No. 6 at ¶ 10-11. As the Debtors admit in their pleadings, "both the Texas and Connecticut courts have imposed multiple sanctions and ruled that Jones, FSS, and the Debtors failed to comply with discovery requirements such that judgment on *liability* has been entered against them by default." *Id.* at ¶ 13 (emphasis in original). The first trial on damages, in Texas, was scheduled to begin jury selection on April 25, 2022. *Id.* at ¶ 14. In the Connecticut litigation, several weeks before the bankruptcy filings, the court again sanctioned Alex Jones for failing to attend his deposition and advised that trial in that case would nevertheless go forward in August 2022. Super Ct. DN 788, 3/30/22 Hearing at 25:4-9.

16. Additionally, prior to filing these chapter 11 cases, the defendants in the Sandy Hook Lawsuits tried multiple times, all unsuccessfully, to remove the litigation to federal courts. *See, e.g.,* No.: 3:18-CV-1156 (JCH), DN 58, 11/5/18 Ruling Re: Mot. for Remand; No. 3:20-cv-1723 (JCH), DN 44, 3/5/21 Ruling Re: Mot. for Remand. After the first remand in Connecticut failed, the defendants attempted to have the presiding Judge removed for "appearance of judicial

[10] Specifically, the Connecticut cases appear to name all three Debtors, but the Texas cases name only one Debtor, InfoW (which the Sandy Hook Plaintiffs have since nonsuited in the imminent damages trial). *See* Dkt. No. 6 at ¶ 12.

impropriety," which also failed. *See* Dkt No. UWYCV186046438S, Order 421277 (Conn. Sup. Ct. November 4, 2021).

17. Immediately after these filings, the defendants again sought to remove the Sandy Hook Lawsuits. *See, e.g.,* Dkt. No. 1, Case No. 22-01022 (Bankr. W.D. Tex. April 18, 2022); Dkt. No. 1, Case No. 22-05004 (Bankr. D. Conn. April 18, 2022). The Sandy Hook Plaintiffs have filed motions seeking a remand of the lawsuits back to the state courts. *See, e.g.,* Dkt. No. 5 (Motion for Remand), Case No. 22-05004 (Bankr. Conn. April 21, 2022); Dkt. No. 7 (Motion for Abstention and Remand), Case No. 22-01023 (Bankr. W.D. Tex. April 26, 2022). Debtor InfoW has also filed a motion seeking to transfer the Texas cases out of the bankruptcy court for the Western District of Texas to the bankruptcy court for the Southern District of Texas. Dkt. No. 7, Case No. 22-01022 (Bankr. W.D. Tex. April 28, 2022).

18. Certain of the Debtors are also defendants in other pending litigation, some of which was the result of the Sandy Hook Lawsuits. Dkt. No. 6 at ¶ 12. As with the Sandy Hook Lawsuits, while only certain of the Debtors are defendants in such litigation, both Alex Jones and FSS are defendants in *every* case. *Id.* In one case, plaintiffs sued under the Texas Uniform Fraudulent Transfer Act alleging that Alex Jones diverted his assets to companies owned by insiders such as his parents and children. *Id.*

The Litigation Settlement Trust and "Plan Support Agreement"

19. As stated above, only three days before the Petition Date, the Debtors, Alex Jones, and FSS entered into the LST. *Id.* at ¶¶ 9, 16-17 (the LST is annexed to Dkt. No. 6 as Exhibit A). Although Alex Jones transferred his equity interests in the Debtors into the LST,

Alex Jones and FSS remain in charge of the income-producing entities of the Alex Jones Enterprise. *See id.* Moreover, the funding in the LST will come from Alex Jones and FSS, who initially funded $725,000 into the trust to pay the administrative expenses of these cases and who propose to limit funding to $10 million. *Id.* at ¶ 17; LST at § 1.3(b), (c); Dkt. No. 35 at ¶ 11. The LST prohibits the LST Trustees from causing the Debtors to file an involuntary petition against either Alex Jones or FSS. LST at § 1.3(a)(iii).

20. Simultaneously with the creation of the LST, the Debtors also entered into a PSA with Alex Jones and FSS that dictates the roadmap for the Debtors' cases. *Id.* at ¶ 17, Exhibit B (*Plan Support Agreement*), p. 1. Under the PSA, the parties agree to take various steps in the bankruptcy cases, including establishing a bar date for claims and a protocol for claims estimation and incorporating the settlement of the claims by the LST Trustee(s) in a subchapter V plan of reorganization. PSA at pp. 5-8. Under the PSA, any plan of reorganization in the Debtors' cases and all related documents must be approved by Alex Jones and FSS. *Id.* at p. 2 (definition of Approved Plan Documents).

21. The LST appears to contemplate that the Debtors' plan of reorganization will include a channeling injunction and releases for Alex Jones and FSS. *See* LST at § 10.1(c). If approved, such a channeling injunction would force the Sandy Hook Plaintiffs to seek payment from the LST for their claims rather than pursue them directly against Alex Jones and FSS, and such a release would bar the claimants from ever pursuing Alex Jones and FSS in the future.

22. Both the LST and PSA include secrecy provisions designed to limit the information that anyone, including the LST Trustees, can elicit from Alex Jones and FSS, including requirements for parties to agree to confidentiality agreements acceptable to Alex Jones and FSS before obtaining any information. *See* PSA at §§ 4(a)(iii), (b)(3); *see also* LST at

§§ 1.2(d), 2.2(a). The PSA further limits the financial information Alex Jones or FSS must provide to only that "reasonably needed to determine that [Alex Jones and FSS have] the ability to pay Allowed Litigation Settlement Trust Claims in full, in accordance with the Plan." PSA at §§4 (a)(iii).

23. Unlike plan support agreements in other chapter 11 cases, no creditor participated in the drafting or negotiation of the LST or PSA in these cases. Instead, these are agreements among insiders.

Subchapter V

24. Debtors elected treatment under subchapter V, established by the Small Business Reorganization Act of 2019, Pub. L. No. 116-54 ("SBRA"), which establishes rules and procedures to lower the cost of and simplify the path through chapter 11 for certain small business enterprises. Subchapter V is wholly elective and its "provisions . . . effectively hybridized chapters 11 and 13. The beneficiaries are the truly 'small' debtors: individuals or mom-and-pop/small businesses." Robert C. Meyer, *Small Business Reorganization Act Arrives This Month*, XXXIX ABI Journal 2, 8-9, 48-49, at 9, February 2020.

25. Eligibility for relief under subchapter V is governed by 11 U.S.C. § 1182(1). Under section 1182(1)(A), a debtor is currently eligible for subchapter V if (a) the debtor is engaged in *commercial* or *business* activities; (b) the debtor has aggregate noncontingent liquidated secured and unsecured debts of not more than $3,024,725 (excluding debts owed to insiders or affiliates); and (c) at least 50% of the qualifying indebtedness arose from the commercial or business activities of the debtor.

LEGAL STANDARD

26. Section 1112(b)(1) of the Bankruptcy Code requires a court to dismiss a chapter 11 case upon finding that "cause" exists for such dismissal, unless the court instead determines that the appointment of a trustee or examiner is in the best interests of creditors. 11 U.S.C. § 1112(b)(1).[11] Section 1112(b)(1) provides in full:

> Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1). Although section 1112(b)(4) of the Code contains a non-exclusive list of what constitutes "cause" for dismissal, the Fifth Circuit Court of Appeals has joined other circuits in holding that "cause" can include a showing that a debtor has not filed its bankruptcy case in good faith. *Little Creek Dev. Co. v. Commonwealth Mortg. Corp. (In re Little Creek Dev. Co.)*, 779 F.2d 1068, 1072-73 (5th Cir. 1986); *see also In re Humble Place Joint Venture*, 936 F.2d 814, 816-17 (5th Cir. 1991). As the Fifth Circuit has stated, this good faith requirement "protects the jurisdictional integrity of the bankruptcy courts by rendering their powerful equitable weapons . . . available only to those debtors and creditors with clean hands." *Little*

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[11] A debtor may also avoid dismissal if it proves unusual circumstances satisfying the criteria set forth in section 1112(b)(2). Section 1112(b)(2) provides, in full,

> (2) The court may not convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes that—
> (A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and
> (B)the grounds for converting or dismissing the case include an act or omission of the debtor other than under paragraph (4)(A)—
> (i) for which there exists a reasonable justification for the act or omission; and
> (ii) that will be cured within a reasonable period of time fixed by the court.

11 U.S.C. § 1112(b)(2).

Creek, 779 F.2d at 1072. It "prohibits a debtor's misuse of the process where the overriding motive is to delay creditors without any possible benefit, or to achieve a reprehensible purpose through manipulation of the bankruptcy laws." *Elmwood Dev Co. v. Gen. Elec. Pension Tr. (In re Elmwood Dev. Co.)*, 964 F.2d 508, 510 (5th Cir. 1992). And in *Humble Place*, 936 F.2d at 818, the Fifth Circuit affirmed dismissal where, among other things, the bankruptcy court found that the principal purpose of the chapter 11 filing was to "cleanse the partners of their liability," reasoning that "[o]f course, the partners are not the Chapter 11 debtor, and their fate is irrelevant to the propriety of Humble Place's filing. The court was correct to determine that this impermissible purpose cast doubt on the venture's objective good faith."

27. In *Little Creek*, the Fifth Circuit addressed how a reviewing court should approach the good faith inquiry—using an "on-the-spot evaluation of the debtor's financial condition, motives, and the local financial realities. . . .predicated on certain recurring but non-exclusive patterns, and [ ] based on a conglomerate of factors rather than on any single datum." 779 F.2d 1068 at 1072.[12] This is often referred to as a "totality of the circumstances" approach, and a similar approach is followed by most other circuits. *See In re 15375 Mem'l Corp. v. Bepco, L.P.*, 589 F.3d 605, 618, n.7 (3d Cir. 2009) (collecting cases); *see also In re Nat'l Rifle Ass'n of Amer.*, 628 B.R. 262, 280 (Bankr. N.D. Tex. 2021) (citation omitted).

28. The Third Circuit Court of Appeals has highlighted two inquiries that are particularly relevant to the question of good faith when considering the totality of circumstances

[12] In *Little Creek*, the court also described various factors that tend to be present in a bad faith filing, including that the debtor has one asset that is encumbered by a secured creditor's liens, no employees, little or no cash flow or sources of income to fund a plan, few unsecured creditors, and is subject to a foreclosure action or a state-court litigation that has proceeded to a stand-still, and that there are allegations of wrongdoing by the debtor or its principals. *Id.* at 1072-73. Several of these factors are present in the Debtors' cases. They have minimal assets, no employees, no cash flow, little or no income with which to fund a plan, few unsecured creditors beyond the litigation plaintiffs, are involved in a state court litigation in which they have already been found liable, and there are allegations of wrongdoing by their former 100% controlling interest holder.

of a debtor's filing: (1) whether the petition serves a valid bankruptcy purpose and (2) whether the petition is filed merely to obtain a tactical litigation advantage. *Off. Comm. of Unsecured Creditors v. Nucor Corp. (In re SGL Carbon Corp.)*, 200 F.3d 154, 165 (3d Cir. 1999). Other courts, including those within the Fifth Circuit, have adopted a similar inquiry when considering whether to dismiss a case as a bad faith filing. *See, e.g., Antelope Techs., Inc. v. Janis Lowe (In re Antelope Techs., Inc.)*, 431 Fed. Appx. 272, 275 (5th Cir. 2011) (affirming dismissal of a case for bad faith where the lower court concluded the debtors filed to gain an advantage in shareholder litigation); *Nat'l Rifle Ass'n*, 628 B.R. at 264, 270, 279-80 (finding cause to dismiss case for bad faith "because it was filed to gain an unfair litigation advantage and because it was filed to avoid a state regulatory scheme"); *In re Leslie*, No. 98-35386-H3-11, 1999 Bankr. LEXIS 2113, at *5 (Bankr. S.D. Tex. Feb. 11, 1999) (finding, in the totality of circumstances, that case was commenced for the primary purpose of gaining an unfair advantage in a litigation).

29. In the Fifth Circuit, the party seeking dismissal is required to make a *prima facie* showing that the debtor lacked good faith in filing its case, after which the burden shifts to the debtor to demonstrate good faith. *In re Mirant Corp.*, 2005 Bankr. LEXIS 1686, *27 n.20 (Bankr. N.D. Tex. Jan. 26, 2005); *In re Sherwood Enters., Inc.*, 112 B.R. 165, 170-71 (Bankr. S.D. Tex. 1989), *judgment entered*, (Bankr. S.D. Tex. Jan. 27, 1989). The moving party need only prove that the filing was objectively in bad faith, rather than showing that a debtor intended to misuse its bankruptcy filing. *See Elmwood Dev.*, 964 F.2d at 512 ("Because the good faith standard is an objective one, the court was not constrained to entertain and give dispositive weight to the subjective state of mind of Elmwood's manager.").

ARGUMENT

I. These Bankruptcy Cases Must be Dismissed for Cause.

30. The totality of facts and circumstances establishes cause for this Court to dismiss the Debtors' cases as a bad faith filing for at least two reasons: (1) the Debtors' cases do not serve a valid bankruptcy purpose; and (2) the Debtors filed these cases to gain a tactical litigation advantage.

31. Although the facts and indicia of bad faith supporting each of these grounds for cause have already been established in the public filings before this Court, the U.S. Trustee is also prepared to propound discovery, if necessary, to further adduce evidence supporting each ground.

A. These Cases Do Not Serve a Valid Bankruptcy Purpose.

32. The purpose of bankruptcy is to give "to the honest but unfortunate debtor . . . a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." *Loc. Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934); *see* Report of the Committee on the Judiciary, House of Representatives to Accompany H.R. 8200, H.R. Rep. No. 595 (1977), *reprinted in* 1978 U.S.C.C.A.N. 6179 ("The purpose of a business reorganization case, unlike a liquidation case, is to restructure a business's finances so that it may continue to operate, provide its employees with jobs, pay its creditors, and produce a return for its stockholders."). Chapter 11 furthers this purpose in two complementary ways: (1) "preserving going concerns" and (2) "maximizing property available to satisfy creditors." *Bank of Am. Nat'l Trust & Sav. Ass'n. v. 203 N. LaSalle St. P'Ship*, 526 U.S. 434, 452 (1999).[13]

[13] Other objectives of the Bankruptcy Code include "avoidance of the consequences of economic dismemberment and liquidation, and the preservation of ongoing values in a manner which does equity and is fair to rights and interests of the parties affected." *SGL Carbon*, 200 F.3d at 161 (citing *In re Victory Constr. Co., Inc.*, 9 B.R. 549, 558 (Bankr. C.D. Cal. 1981), *order stayed, Hadley v. Victory Constr. Co., Inc. (In re Victory Constr. Co., Inc.)*, 9 B.R. 570 (Bankr. C.D. Cal. 1981), *order vacated*, 37 B.R. 222 (1984)).

33. In furthering these objectives, chapter 11 vests a debtor with considerable protections—among them the automatic stay and the discharge of debts. Subchapter V adds additional debtor protections—no creditors' committee unless the Court orders one for cause, no requirement for a disclosure statement, the debtor's exclusive right to file a plan of reorganization, and the debtor's ability to "cram down" confirmation of a plan without an impaired accepting creditor class—that "can impose significant hardship on creditors." *See SGL Carbon,* 200 F.3d at 165. Under appropriate circumstances, "the exercise of those powers is justified. "But this is not so when a petitioner's aims lie outside those of the Bankruptcy Code." *Id.* at 166 (emphasis added). As the Fifth Circuit (affirmed by the Supreme Court) advised in *Timbers of Inwood Forest*, "when there is no reasonable likelihood that the statutory objective of reorganization can be realized . . . then the automatic stay and other statutory provisions designed to accomplish the reorganization objective become destructive of the legitimate rights and interests of creditors, the intended beneficiaries." *United Savs. Assoc. of Texas v. Timbers of Inwood Forest Assocs., Ltd. (In re Timbers of Inwood Forest Assocs., Ltd.)*, 808 F.2d 363, 373 (5th Cir. 1987) (en banc), *aff'd*, 484 U.S. 365 (1988).

i. *The Debtors have no Reorganizational Purpose.*

34. These cases are demonstrably not about reorganizing, rehabilitating, or granting a fresh start to an honest, unfortunate debtor. The Debtors' bankruptcy filings do not serve any recognized objective of the Bankruptcy Code. These Debtors have no businesses and no purpose to reorganize.

35. As the Debtors' proposed CRO attests, these Debtors have "no purpose other than to hold assets which may be used by other entities," but these assets "do not generate any income

for them."[14] Dkt. No. 1 at 10-11, ¶ 8. The Debtors do not have bank accounts, financial statements, books of account, or income tax returns. *Id.* There is no debt to restructure, no liens being primed, no cash collateral required, and no post-petition financing being granted because these Debtors "undertake no business activities, they do not sell, rent or lease to others anything." *Id.* But these Debtors were, until three days before the filings, members of a larger enterprise controlled by Alex Jones.[15] Dkt. No. 6 at ¶¶ 8-9. Based on the extremely limited information disclosed about the rest of the Alex Jones Enterprise to date, all the assets and businesses of that enterprise are with Alex Jones, FSS, and other, non-debtor companies, whose finances are not transparent in these cases. *Id.*; *see also* Tr. April 22, 2022 at 55.

36. On the contrary, these filings are an attempt to subvert the purpose of the Bankruptcy Code and the subchapter V provisions designed to assist struggling small businesses to reorganize. Alex Jones and FSS hand-picked these three holding companies for bankruptcy as part of a scheme engineered solely to limit their own legal liability, to deny parties in interest a full accounting of their assets, and to deny individuals their day in court and imminent recovery for established liability. Neither the Debtors nor their creditors benefit from these bankruptcy cases. The only ones benefiting are Alex Jones and FSS, who seek to reap the benefits of chapter 11 without any of its burdens.

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[14] One debtor, IWHealth, apparently has rights to a royalty payment of $38,000 previously diverted to Alex Jones. The newly hired CRO discovered this debtor asset after some due diligence before this bankruptcy filing and requested that the royalty be paid to the rightful entity. *See* Tr. April 22, 2022 at 43, 48-9.

[15] Equitable principles relating to insider transactions support dismissal of these cases given Alex Jones's control of all parties and engineering of the LST and PSA prior to the filing of these cases. *See Pepper v. Litton*, 308 U.S. 295, 306-07 (1939) ("The essence of the test [for good faith of an insider transaction] is whether or not under all the circumstances the transaction carries the earmarks of an arm's length bargain. If it does not, equity will set it aside.").

ii. ***The Insider-Negotiated PSA and LST Evidence that Debtors Are Attempting to Abuse the Bankruptcy Code to Shield Non-Debtors from Disclosure and Legal Liability and to Minimize Recovery to Creditors.***

37. Although the Debtors claim they filed these cases because they were concerned that "efforts to collect on a judgment of the Texas actions would result in leaving nothing for the Connecticut Sandy Hook Plaintiffs or other creditors" and further claim they intend to pay all litigation claims "in full," all evidence suggests that these filings were *not* a benevolent effort by the Debtors to ensure a fair distribution to all creditors. *See* Dkt. No. 6 at ¶¶ 15, 16. Because the members of the Alex Jones Enterprise who hold the assets and are themselves defendants and liable to the Sandy Hook Plaintiffs—Alex Jones and FSS—did not file for relief, there is no transparency into their assets or any statutory mechanism for distributing those assets. Instead, we start this case with the LST and PSA—entered into prior to bankruptcy between affiliated entities, without any creditor support—which cloak Alex Jones's and FSS's books and records in secrecy by imposing confidentiality restrictions on those seeking access and further provide that parties can only obtain access to information reasonably needed to determine whether Alex Jones and FSS can pay estimated, not actual, claim amounts.[16] *See* PSA at §§4(a)(iii), (b)(3); *see also* LST at §§1.2(d), 2.2(a).

38. But the PSA sets a course for the Debtors whereby claims will not be paid in full by any ordinary understanding of that term. Instead, under the PSA, the Debtors must quickly seek approval for a litigation claims bar date and then a claims estimation process, which allows them to cap what can be paid to creditors from whatever assets Alex Jones and FSS choose to

[16] Given this structure, no party in interest can determine whether Alex Jones and FSS actually have the funds to satisfy all of the claims against them (in which case, they have no reason to be concerned about favoring certain creditors over others) or whether they do not have sufficient funds (in which case, it is unclear why they would care how these assets are divided).

contribute in a subchapter V plan of reorganization. *See* PSA at 5-8. Based on the information provided to date, even were Debtors to succeed in having the claims estimated, it is not clear how any plan for the Debtors could be feasibly confirmed because the Debtors have no assets to contribute to a plan, and the PSA provides only that Alex Jones and FSS will contribute money until they decide not to. *See* PSA at §4(b).

39. Moreover, section 502(c) of the Bankruptcy Code only requires a bankruptcy court to estimate a contingent or unliquidated claim where failure to do so "would unduly delay the administration of the case." *See* 11 U.S.C. § 502(c); *O'Neill v. Continental Airlines, Inc.* (*In re Continental Airlines, Inc.*), 981 F.2d 1450, 1461 (5th Cir.1993) ("In order for the estimation process of § 502(c) to apply, . . . fixing the claim must entail undue delay in the administration of justice."); *In re Dow Corning Corp.*, 211 B.R. 545, 563 (Bankr. E.D. Mich. 1997) ("[E]stimation does not become mandatory merely because liquidation may take longer and thereby delay administration of the case. . . .bankruptcy law's general rule is to liquidate, not to estimate. For estimation to be mandatory, then, the delay associated with liquidation must be 'undue.'"). To determine whether liquidating a claim would unduly delay the case and should instead be estimated, a court should "perform a kind of cost-benefit analysis by considering the time, costs and benefits associated with both estimation and liquidation." *Id.* at 563.

40. Here, the Debtors have attempted to manufacture exigency by electing subchapter V treatment despite not having any operations or assets. Thus, they cannot establish that any delay caused by full liquidation of the claims would be "undue." *See Id.* at 563, 566-67 (denying request for estimation where court determined that the strategy behind the request was ultimately to limit the amount the debtor would have to pay and the time delay was "highly speculative" and there was no guarantee estimation would be faster.). Estimation is a "second-best"

procedure in any circumstance, and it is hard to see how there is any benefit to estimating the Sandy Hook Plaintiffs' claims rather than allowing the imminent trials to proceed to full, actual judgment. *See, e.g., Apex Oil Co. v. Stinnes Interoil, Inc. (In re Apex Oil Co)*, 107 B.R. 189, 193 (Bankr. E.D. Mo. 1989) (finding no undue delay where trial in was "imminent"); *see also In re N. Am. Health Care, Inc.,* 544 B.R. 684, 689 (Bankr. C.D. Cal. 2016) (limiting the claims to be estimated and stating "[b]ecause estimation is a second-best method . . . . a bankruptcy court ought not to expand the estimation's scope beyond this limited extent absent compelling reasons to do so.").[17]

41. Further, the handwriting is on the wall that Alex Jones and FSS will seek orders of this Court staying further actions against them in the Sandy Hook Lawsuits (which they have already sought to remove based on these cases) and that they and the Debtors will ultimately seek involuntary non-consensual releases, or their functional equivalent, of the plaintiffs' tort claims against Jones, FSS, and other related, non-debtor parties. The LST itself suggests that the Debtors' forthcoming plan of reorganization will involve a channeling injunction and, ultimately, some type of release for Alex Jones and FSS. *See* LST at 2; § 10.1(c). The liabilities facing Alex Jones arise out of allegations of his intentional tortious conduct that could likely not be discharged in his own bankruptcy under section 523 of the Code. 11 U.S.C. § 523(a)(6). Thus,

[17] Moreover, the claims in the Sandy Hook Lawsuits are personal injury claims and thus a trial on the claims is not a core proceeding in the Debtors' cases and cannot be adjudicated by this Court. *See* 28 U.S.C. § 157(b)(2)(B) and (b)(5). In addition, bankruptcy courts are constitutionally prohibited from holding jury trials on non-core claims and may not hold jury trials on core claims without the consent of both parties. *See* 28 U.S.C. § 157(e); *Orion Pictures Corp. v. Showtime Networks Inc. (In re Orion Pictures Corp.),* 4 F.3d 1095, 1101 (2nd Cir. 1993). Finally, the Debtors' proposal to impose on the plaintiffs an expedited bar date, an estimation process, and a capped distribution via a settlement trust through an artificially staged and orchestrated bankruptcy may also raise concerns about whether they are receiving the due process owed to them under the Constitution.

any such outcome would give him more from the bankruptcy of three non-operating entities in his enterprise than he could obtain in his own personal bankruptcy case.

42. Finally, the creditors themselves are plainly not asking for this relief. No creditor was involved in negotiating the LST or the PSA prior to the filings. And the main creditors in these cases, the Sandy Hook Plaintiffs, have rejected this structure.

iii. ***The Lawsuits that Allegedly Precipitated these Filings Primarily Concern Non-Debtors.***

43. To add to the Debtors' lack of an ongoing concern or valuable property that this case might seek to preserve or to maximize, the proposed CRO also admits that the Debtors "have no debt or other liabilities other than those related to pending or potential litigation." Dkt. No. 1 at 10-11, ¶ 8. This pending litigation, which the Debtors claim caused a "classic 'race to the courthouse'" precipitating this filing, appears to comprise fewer than ten lawsuits, some of which have been ongoing for many years. Dkt. No. 6 at ¶¶ 12, 14. The true catalysts that prompted the filing of these cases are the Sandy Hook Lawsuits pending in Texas and Connecticut, each of which were scheduled for a jury trial on damages before the filings (the first beginning April 25, 2022).[18] *Id.;* Dkt. No. 5, Case No. 22-05004 (Bankr. D. Conn. April 18, 2022).

44. But these lawsuits do not arise from Debtors' conduct. Rather, the lawsuits arise from the allegedly tortious, intentional conduct of Alex Jones and FSS (through its employees),

[18] Counsel for plaintiffs has advised that the other Sandy Hook Lawsuits in Texas are scheduled for trial in June and August 2022. Tr. April 22, 2022 at 70. The Connecticut Sandy Hook Lawsuit is scheduled for trial in August 2022. Dkt. No. 1, Case No. 22-05004 (Bankr. D. Conn. April 18, 2022).

who did not file for bankruptcy in this or any other court. In fact, the Debtors are not co-defendants in every lawsuit involving the Alex Jones Enterprise.[19]

45. This all begs the same question—the obvious question since the day these cases were filed—why are these three Debtors in bankruptcy when Alex Jones and FSS are not? At the first hearing in these cases, the Debtors' CRO suggested that Alex Jones was concerned about reputational damage to himself and the possible loss of vendors to FSS if they filed for bankruptcy. *See* Tr. April 22, 2022 at 45, 55. But the main vendor to the Alex Jones Enterprise, PQPR Holdings, is simply another member of that enterprise, controlled by Alex Jones insiders. Dkt. No. 17-6. Surely Alex Jones wasn't concerned he would refuse to deal with himself. In any event, it is clear that by not seeking bankruptcy relief themselves, Alex Jones and FSS do not have to disclose their finances.

iv. *The Debtors Are Attempting to Manipulate the Provisions of Subchapter V.*

46. The Debtors assert that they are precisely the types of enterprises that Congress had in mind when it passed SBRA, enacting subchapter V of chapter 11. Nothing in the language of subchapter V or in its legislative history validates this position. The Debtors, who are incapable of funding a plan themselves, attempt to subvert a statutory scheme that was designed to aid well-intentioned small businesses in their efforts to reorganize their financial

[19] While all three debtors appear to be co-defendants in the Connecticut Sandy Hook Lawsuit, only one debtor, InfoW, is a co-defendant in the Texas Sandy Hook Lawsuit that was scheduled for jury selection April 25, 2022. Nevertheless, when the plaintiffs in one such case filed to nonsuit that debtor and proceed against Alex Jones and FSS, defendants continued their efforts to remove the case to federal court based on the bankruptcy of the non-suited defendant. *See* Chuck Lindell, *Judge Reluctantly Delays Alex Jones Trial in Sandy Hook Case, Criticizes His Lawyers,* Austin American Stateman (April 20, 2022, updated April 21, 2022, 8:21AM), https://www.statesman.com/story/news/2022/04/20/austin-tx-judge-delays-alex-jones-sandy-hook-trial/7382689001/.

affairs into an obvious scheme to protect Alex Jones and FSS from liability in the Sandy Hook Lawsuits. The bankruptcy process should not be used to further this abusive scheme.

47. The elements of this scheme are not difficult to see. The three non-operating Debtors filed in an attempt to satisfy eligibility for subchapter V to benefit all of the non-debtor defendants.

48. Even though courts in Texas and Connecticut had entered default judgments against Debtors in favor of Sandy Hook Plaintiffs due to Jones's pattern of misconduct in those cases, the Debtors assert that their indebtedness is all "unliquidated." Why? Because unliquidated debts are not counted toward establishing if a debtor and its affiliated debtors have too much debt in the aggregate to avail themselves of subchapter V. 11 U.S.C. § 1182(1). How? The Debtors—some of which aren't defendants in every action against Alex Jones and FSS—filed to stay the damages phases of the Sandy Hook Lawsuits that would establish the amounts that the Debtors, Alex Jones, and FSS owe the plaintiffs for their tortious conduct. Although the Debtors claim that they are trying to avoid a "race to the courthouse," the only race that has occurred here is the Debtors' race to this courthouse, seeking the protection of this Court to avoid the scheduled state court trials on damages. Little doubt exists that the total damage award against the Debtors, Alex Jones, FSS, and other non-debtor solvent entities of the Alex Jones Enterprise would exceed the debt limit currently in place for subchapter V.

49. It is also not difficult to see what led the Debtors to choose subchapter V for this scheme. Subchapter V has features that, when manipulated in the manner proposed by the Debtors, can transform it from a tool to be used by earnest small operating entities to rehabilitate their business and financial affairs to a weapon used against innocent creditors. For example, a subchapter V debtor must file a plan not later than 90 days after the date of the order for relief.

Although at first blush this requirement might seem burdensome to a debtor, in these cases, it appears the Debtors intend to rely on the 90-day plan deadline to argue that the Court must quickly estimate the Sandy Hook Plaintiffs' claims to avoid "undue delay" in the administration of these cases. *See* 11 U.S.C. § 502(c)(1); *see supra,* ¶¶ *38-9*.

50. As another example, in a subchapter V case, no committee is appointed unless the Court determines there is cause for the appointment of a creditors' committee and orders the appointment of one. 11 U.S.C. § 1102(a)(3). Relatedly, confirmation of a non-consensual subchapter V plan under section 1191 of the Code does not require that any class of impaired non-insider claims affirmatively vote to accept the plan. Instead, subchapter V enables a court to confirm a plan over the dissenting votes of unsecured creditor classes so long as the plan provides that three to five years of the debtor's projected disposable income will be paid under the plan. 11 U.S.C. § 1191(c)(2). Thus, the Debtors can seek to "cram down" their plan without regard to whether a single Sandy Hook Plaintiff votes in favor of that plan. And because the Debtors have little or no income, this would not be much of a burden for Debtors nor much of a benefit for creditors. Although Alex Jones and FSS have agreed to advance some amount to the Debtors for plan payments, there is no transparency to how those amounts were determined—and they were not determined by negotiation with creditors. Further, because Alex Jones and FSS are not themselves debtors, this Court will not have authority to require them to satisfy the best interests of creditors test—showing that the plan yields more value for creditors than a chapter 7 liquidation—or require that all of Alex Jones's and FSS's projected disposable income for three to five years will be paid to Debtors for distribution to their joint creditors.

51. These cases thus represent an imaginative attempt to misuse subchapter V of chapter 11 to protect non-debtors whose conduct hardly shows them to be the honest but unfortunate debtors entitled to bankruptcy relief even had they themselves filed.

v. *For the Reasons Set Forth in Subsections i through iv, The Debtors' Bankruptcy Cases Must be Dismissed.*

52. Given the totality of circumstances supporting the Debtors' petitions, as set forth in subsections *i* through *iv* above, these Debtors do not belong in bankruptcy and their cases must be dismissed. "According to the Fifth Circuit, '[g]ood faith implies an honest intent and genuine desire on the part of the petitioner to use the statutory process to effect a plan of reorganization and not merely as a device to serve some sinister or unworthy purpose.'" *In re Cedar Short Resort, Inc.*, 235 F.3d 375, 379 (8th Cir. 2000) (quoting *In re Metro. Realty Corp.*, 433 F.2d 676, 678 (5th Cir. 1970)). "Congress has never intended that bankruptcy be a refuge for the irresponsible, unscrupulous or cunning individual." *In re Rognstad*, 121 B.R. 45, 50 (Bankr. D. Haw. 1990). And courts should apply particular scrutiny to cases involving "asset-culled entities where 'debtors have elected not to submit the actual entities in interest to the jurisdiction of the court, thereby isolating the entities in interest from the scrutiny and control of the court during proceedings.'" *In re Eden Assocs.,* 13 B.R. 578, 58485 (Bankr. S.D.N.Y. 1981) (dismissing case where court determined, among other things, "that this debtor was formed, if at all, and the property purportedly conveyed to it, to shield the assets of Cook's more affluent companies from the jurisdiction of the Bankruptcy Court") (*quoting In re Dutch Flat Inv.,* 6 B.R. 470, 471 (Bankr. N.D. Cal. 1980)) (emphasis added).

53. Alex Jones and FSS should not be permitted to use chapter 11 as a means to shield their assets from the plaintiffs. "Chapter 11 was not designed for the purpose of protecting assets and interests of non-debtor parties under the guise of a legitimate plan of

reorganization." *In re Davis Heritage GP Holdings, LLC*, 443 B.R. 448, 462 (Bankr. N.D. Fla. 2011). Because these cases were not filed for a valid bankruptcy purpose, they must be dismissed.

B. The Debtors Filed these Cases to Gain a Litigation Advantage for Non-Debtors Alex Jones and FSS.

54. The timing of these filings—only eight days before the commencement of a jury trial against the defendants in one of the Texas Sandy Hook Lawsuits—together with the pattern of behavior exhibited by the defendants before the courts overseeing the Sandy Hook Lawsuits, reveals that the Debtors' bankruptcy petitions were filed as a litigation tactic to obstruct and delay an imminent trial establishing damages against defendants, including non-debtors Alex Jones and FSS, in state court litigation.

55. "[B]ecause filing a Chapter 11 petition merely to obtain tactical litigation advantage is not within the legitimate scope of bankruptcy laws, . . . courts have typically dismissed chapter 11 petitions under these circumstances. . . ." *SGL Carbon*, 200 F.3d at 165 (citations omitted); *see also Antelope Techs.*, 431 Fed. Appx. at 275 (affirming dismissal of a case for bad faith where the lower court concluded the debtors filed to gain an advantage in shareholder litigation); *Leslie*, 1999 Bankr. LEXIS 2113, at *5 (finding, in the totality of circumstances, that case was commenced for the primary purpose of gaining an unfair advantage in a litigation). Further, "[w]here the timing of the filing of a Chapter 11 petition is such that there can be no doubt that the primary, if not sole, purpose of the filing was a litigation tactic, the petition may be dismissed as not being in good faith." *15375 Memorial Corp.*, 589 F.3d at 625-26 (citing *SGL Carbon*, 200 F.3d at 165). For example, in *15375 Memorial Corp.,* the Third Circuit found that given a mix of facts and "the Debtors' sudden decision to file for bankruptcy

despite their [sic] having been dormant and without employees or offices for several years," the Court "[could not] escape the conclusion that the filings were a litigation tactic." *Id*. at 625-26. And in *Cedar Shore,* the Eighth Circuit affirmed dismissal of a case where there existed "strong evidence to support the finding that [the debtor] did not file bankruptcy to effectuate a valid reorganization, but rather to prevent the [the plaintiffs] from pursuing their claims in state court." 235 F.3d at 380–81.

56. Here, the Debtors have all but admitted that they filed these petitions solely to stop the Sandy Hook Lawsuits from proceeding in state court and to resolve them in the way the Alex Jones Enterprise—but not the Sandy Hook Plaintiffs—sees fit. *See* Dkt. No. 6 at ¶¶ 15, 16; PSA at 5-8. Based on the information disclosed thus far, the Debtors have no or virtually no creditors beyond the litigation plaintiffs. *See, e.g.,* Dkt. No. 1 at ps. 6-7. As discussed above, the main lawsuits the Debtors identify as precipitating these filings are the Sandy Hook Lawsuits pending in Texas and Connecticut. *See* Dkt. No. 6 at ¶¶ 12, 15. Although the Sandy Hook Lawsuits are in different venues, they share many similarities, and these cases thus bear the hallmarks of a classic two-party dispute best left to resolution in the state court. *See Little Creek* at 1072-73; *Sherwood Enters.,* 112 B.R. at 170. And the history of these lawsuits evidences a pattern of behavior—of repeated obstruction and delay tactics—that is simply being repeated and moved to a different forum by these bankruptcy filings.

57. As the Debtors admit in their pleadings, the defendants' sanctionable behavior over a period of at least four years led the courts in both Texas and Connecticut to enter default judgments against them. *See* Dkt. No. 6 at ¶ 13; *see also Lafferty v. Jones,* 336 Conn. 332, 374, (2020)*, cert. denied,* 141 S. Ct. 2467 (2021) (Connecticut Superior Court quoting the trial court stating that "the discovery in this case has been marked with obfuscation and delay on the part of

the defendants"). When the defendants appealed one such sanction, the Connecticut Supreme Court affirmed that the defendants had "willfully disregarded the court's discovery orders." *Lafferty,* 336 Conn. at 377, 79 (noting trial court's consideration of this willfulness "along with the defendants' harassing and intimidating speech toward the plaintiffs' counsel, which together created a whole spectrum of bad faith litigation misconduct."). Defendants have also tried multiple times to remove the Sandy Hook Lawsuits to federal court—even after the first gambit had been rejected and the suit remanded. *See, e.g.,* No.: 3:18-CV-1156 (JCH), DN 58, 11/5/18 Ruling Re: Mot. for Remand; No. 3:20-cv-1723 (JCH), DN 44, 3/5/21 Ruling Re: Mot. for Remand. Unsurprisingly, immediately upon the Debtors' bankruptcy filing, the defendants again sought to remove the lawsuits. *See, e.g.,* Dkt. No. 1, Case No. 22-01022 (Bankr. W.D. Tex. April 18, 2022); Dkt. No. 1, Case No. 22-05004 (Bankr. D. Conn. April 18, 2022). These bankruptcy filings are merely the latest in a long line of efforts by Alex Jones and FSS to obstruct and hinder the courts' ability to liquidate damages in Texas and Connecticut.

58. In addition, the *timing* of these filings also unquestionably supports a finding that their purpose was as a litigation tactic against the Sandy Hook Plaintiffs. After all the defendants' delay and obstruction, the first trial on damages was scheduled to begin with jury selection on April 25, 2022. *Id.* at 14. These cases were filed *only eight days before*. The cases were also filed only weeks after Alex Jones repeatedly refused to attend his scheduled deposition in Connecticut, after which the court again sanctioned him and advised that the trial in that case would nevertheless go forward in August 2022. [20] Super Ct. DN 788, 3/30/22 Hearing at 25:4-9. And while only one debtor, InfoW, is a co-defendant in Texas, when the Sandy Hook Plaintiffs filed to nonsuit InfoW and proceed solely against Alex Jones and FSS, InfoW

[20] After the imposition of escalating sanctions, Jones ultimately appeared for his deposition.

nonetheless continued its efforts to remove the cases to a federal court and has now sought to transfer venue of those cases. *See* Dkt. No. 1, Case No. 22-01022 (Bankr. W.D. Tex. April 18, 2022); Dkt. No. 7, Case No. 22-01022 (Bankr. W.D. Tex. April 28, 2022); Chuck Lindell, *Judge Reluctantly Delays Alex Jones Trial in Sandy Hook Case, Criticizes His Lawyers,* Austin American Stateman (April 20, 2022, updated April 21, 2022, 8:21AM), https://www.statesman.com/story/news/2022/04/20/austin-tx-judge-delays-alex-jones-sandy-hook-trial/7382689001/.

59. Perhaps the best evidence that this filing is for a litigation advantage comes from Mr. Jones's lawyer himself as reported by the Wall Street Journal:

> Mr. Jones's lawyer, Norm Pattis, said Wednesday that they have tried to settle the case "on reasonable terms" and that Sandy Hook families "persist in trying to destroy Alex and his companies."
> **"We're turning to the bankruptcy courts to compel the plaintiffs to estimate the value of their claims in open court by discernible evidentiary standards,"** Mr. Pattis said. "The plaintiffs have turned this litigation into a macabre morality play and have refused to negotiate in good faith. We hope they will show respect to the federal courts."

Infowars Bankruptcy Delays Upcoming Sandy Hook Trial, Wall Street Journal (April 20, 2022) (emphasis added) available at https://www.wsj.com/articles/infowars-bankruptcy-delays-upcoming-sandy-hook-trial-11650494400?mode=list

60. All the evidence suggests that Alex Jones and FSS intended and still intend to use this bankruptcy to accomplish their long-sought goal of having some other court besides those in Texas and Connecticut resolve the Sandy Hook Lawsuits.[21] But they don't want just any court.

[21] Immediately prior to the filing. the Debtors obtained leases for the Debtor entities in Victoria, Texas, despite their being previously located at all times in Austin, Texas (the site of the rest of the Alex Jones Enterprise as well as the Texas Sandy Hook Lawsuits). Tr. April 22, 2022 at 52-3. For purposes of venue under 28 U.S.C. § 1408, at least one bankruptcy court has held that the "domicile" of an entity is its state of incorporation, and venue in any district in the state is proper for that entity. *See In re ERG Intermediate Holdings, LLC,* No. 15-31858-

They now seek to abuse the bankruptcy system not only to resolve these lawsuits against all of the defendants—Debtors and non-debtors alike—but also to minimize the possible recovery the plaintiffs can receive. *See supra*, ¶¶ 34-51. Because the Debtors' bankruptcy petitions were filed as a litigation tactic to thwart the Sandy Hook Plaintiffs from pursuing their claims in state court, these cases must be dismissed.

II. Dismissal is in the Best Interests of Creditors and the Estates.

61. Once cause is established, "a bankruptcy court *shall*"—must—convert[22] or dismiss the case unless the court determines that appointing a section 1104(a) trustee or examiner is in the best interests of the creditors and the estate'" or the debtor establishes unusual circumstances to avoid dismissal. 11 U.S.C. § 1112(b)(1), (2) (emphasis added).[23]

62. Here, dismissal is in the best interests of the Debtors' creditors, all or almost all of whom are plaintiffs in lawsuits against the Alex Jones Enterprise.[24] These lawsuits are already

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HDH11, 2015 WL 6521607, at *4 (Bankr. N.D. Tex. Oct. 27, 2015) ("[A]n entity that is formed under the laws of a given state is domiciled in the entire state for purposes of section 1408(1) and may file a case under the Bankruptcy Code in any District in that state). Nevertheless, the timing of the effort to obtain these leases and obtaining the leases themselves—suggesting that Debtors were seeking a bankruptcy forum outside of Austin, Texas, the site of the Texas Sandy Hook Lawsuits—is evidence of Jones's intention to manipulate every aspect of this case for his benefit and further indicia of the bad faith of the Debtors leading up to these cases. As the CRO testified at the First Day hearing, the Victoria office is empty and unused by Debtors.

[22] While the U.S. Trustee seeks dismissal as the appropriate remedy in these cases, the Court may also choose to convert these cases to chapter 7. If converted, a chapter 7 trustee may be able to find and monetize assets (as the CRO has in discovering the royalty payment) and initiate actions to avoid fraudulent transfers, among other things.

[23] The Debtors have the burden to prove unusual circumstances. The U.S. Trustee is not aware of any facts that would support such a finding here but reserves his right to oppose any such showing at an appropriate time.

[24] Because the Debtors are the only members of the Alex Jones Enterprise who filed for bankruptcy, there is no benefit to be obtained by the appointment of an examiner that would not be better served by dismissing the case. Moreover, given that these cases can only survive by the funding of Alex Jones and FSS and the pattern of behavior

being administered in state court, the presiding courts have already found the defendants liable, and all that remains is a trial on damages. As of the filings, jury selection in one Texas case was only days away, and jury selection in Connecticut will follow in August. Dismissal would ensure not only that the families can see these proceedings through in the venue they chose before a jury of their peers, but also that any claimant who secures a judgment against any member of the Alex Jones Enterprise can enforce that judgment on assets held by those companies without being subject to the roadblocks and limitations the Debtors, Alex Jones, and FSS have attempted to place before them with the PSA, LST, and these filings. And as evidenced by their own pending motions, the Sandy Hook Plaintiffs—as creditors in these cases—believe their interests would be best served by dismissal of these cases.

RESERVATION OF RIGHTS

63. The U.S. Trustee reserves his rights to supplement this motion further should it become appropriate at any time in the future.

CONCLUSION

WHEREFORE the U.S. Trustee respectfully requests that this Court grant this Motion and grant such other and further relief as it may deem just and proper.

Dated: April 29, 2022

Respectfully Submitted,

KEVIN M. EPSTEIN
UNITED STATES TRUSTEE

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they have displayed in the state court litigations in Texas and Connecticut, it seems unlikely they would agree to continue such funding were an examiner appointed.

Section 1104, which governs the appointment of a trustee in a typical chapter 11 case, does not apply in subchapter V cases.

By: /s/Jayson B. Ruff
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic means via ECF transmission to all Pacer System participants in these bankruptcy cases, on the 29th day of April, 2022.

/s/ Jayson B. Ruff
Jayson B. Ruff

EXHIBIT F

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
BRIDGEPORT DIVISION

ERICA LAFFERTY; DAVID WHEELER; FRANCINE WHEELER; JACQUELINE BARDEN; MARK BARDEN; NICOLE HOCKLEY; IAN HOCKLEY; JENNIFER HENSEL; JEREMY RICHMAN; DONNA SOTO; CARLEE SOTO-PARISI; CARLOS M. SOTO; JILLIAN SOTO; AND WILLIAM ALDENBERG; RICHARD M. COAN, TRUSTEE OF THE BANKRUPTCY ESTATE OF ERICA L. GARBATINI F/K/A ERICA LAFFERTY Plaintiffs, v. ALEX EMRIC JONES; INFOWARS, LLC; FREE SPEECH SYSTEMS, LLC; INFOWARS HEALTH, LLC; PRISON PLANET TV, LLC; WOLFGANG HALBIG; CORY T. SKLANKA; GENESIS COMMUNICATIONS NETWORK, INC.; and MIDAS RESOURCES, INC., Defendants.	Adv. Pro. No. 22-05004 (JAM)

UNOPPOSED MOTION TO DISMISS PLAINTIFFS' CLAIMS AGAINST REMOVING DEFENDANTS INFOWARS LLC (aka INFOW, LLC), INFOWARS HEALTH, LLC (aka IWHealth, LLC) AND PRISON PLANET TV, LLC[1] WITH PREJUDICE

Pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 7041, Plaintiffs David Wheeler, Francine Wheeler, Jacqueline Barden, Mark Barden, Nicole Hockley, Ian Hockley, Jennifer

[1] There are three consolidated cases in the Connecticut Superior Court: *Lafferty v. Jones* (UWY- CV18-6046436-S), *Sherlach v. Jones* (UWY-CV18-6046437-S), and *Sherlach v. Jones* (UWY- CV18-6046438-S). These cases were abusively removed to this Court under names and docket numbers *Lafferty v. Jones* (22-05004), *Sherlach v. Jones* (22-05005), and *Sherlach v. Jones* (22-05006). This identical Motion to Dismiss is being filed in all three bankruptcy cases: 22-05004, 22-05005, and 22-05006.

Hensel, Donna Soto, Carlee Soto-Parisi, Carlos M. Soto, Jillian Soto, William Aldenberg, William Sherlach, Robert Parker, Erica L. Garbatini f/k/a Erica Lafferty, and Richard M. Coan as Chapter 7 Trustee of the bankruptcy estate of Erica L. Garbatini[2] (hereafter "the plaintiffs") move to voluntarily dismiss their claims against Infowars, LLC (aka InfoW, LLC); Infowars Health, LLC (aka IWHealth, LLC); and Prison Planet TV, LLC in these three removed cases (Connecticut Superior Court title and docket numbers *Lafferty v. Jones* (UWY- CV18-6046436-S), *Sherlach v. Jones* (UWY-CV18-6046437-S), and *Sherlach v. Jones* (UWY- CV18-6046438-S), now docketed in this Court as *Lafferty v. Jones* (22-05004), *Sherlach v. Jones* (22-05005), and *Sherlach v. Jones* (22-05006)). The dismissal sought is with prejudice.

In support of their Motion, the Plaintiffs state as follows:

1. Fed. R. Civ. P. 41(a) provides:

> **(a) Voluntary Dismissal.**
> **(1)** ***By the Plaintiff.***
> **(A)** *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:
> **(i)** a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or
> **(ii)** a stipulation of dismissal signed by all parties who have appeared.
> **(B)** *Effect.* Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.
> **(2)** ***By Court Order; Effect.*** Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states

[2] Ms. Lafferty-Garbatini was at one time a party plaintiff to the consolidated actions, and Mr. Coan was then substituted for her as party plaintiff. The removing defendants incorrectly named Ms. Lafferty (and not Mr. Coan) as a plaintiff in the notice of removal, and Ms. Lafferty's inclusion on this motion is unnecessary and superfluous. Nonetheless, to ensure that it is crystal clear that this Motion to Dismiss is fully effective as to the Lafferty claims, this Motion to Dismiss is made on behalf of both Ms. Lafferty-Garbatini and Mr. Coan.

otherwise, a dismissal under this paragraph (2) is without prejudice. Fed. R. Civ. P. 41(a).

2. It is the Plaintiffs' position that dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) is available, and all of the Plaintiffs in these three removed actions voluntarily dismissed their claims against Infowars, LLC (aka InfoW, LLC); Infowars Health, LLC (aka IWHealth, LLC); and Prison Planet TV, LLC by filings dated May 2, 2022.

3. The Debtors objected to the dismissals[3] and have now opposed remand asserting that

> The Debtors would not oppose the Motion for Remand if an order—either from this Court or the Home Court—appropriately reflected that the Plaintiffs' claims against the Debtors are released or dismissed with prejudice.

E.g., Resp. to Mtn. to Remand, ECF No. 22 at 4.

4. It is and has been the Plaintiffs' intent to completely terminate their actions against the Debtors in order to completely terminate the Plaintiffs' involvement in the Debtors' illegitimate use of the bankruptcy process.[4] To clarify that original intent, the Plaintiffs have now filed Rule 41(a)(1)(A)(i) Notices of Dismissal with Prejudice.

5. In order to ensure a perfectly clear record, the Plaintiffs now also move for a Rule 41(a)(2) dismissal with prejudice and without costs.[5]

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[3] *See* ECF No. 19 on Docket No. 22-05004, ECF No. 16 on Docket No. 22-05005, ECF No. 15 on Docket No. 22-05006.

[4] It is not just the Plaintiffs who see the Texas bankruptcy for the sham that it is. The United States Trustee also moved to dismiss the Texas bankruptcy, calling it a "bad faith" abuse of the bankruptcy process. Ex. A, 4/29/22 Mot. of U.S. Trustee to Dismiss, Bankr. Ct. SD TX Doc. No. 22-60020, ECF No. 50.

[5] Typically in a Rule 41(a)(2) motion, the question is whether to permit the plaintiff to dismiss without prejudice. Here, the dismissal sought is with prejudice, relieving the Court of the need to perform that analysis.

6. Plaintiffs' counsel have sought and obtained the following position from the Debtors' counsel: The Debtors do not oppose the granting of this Motion, and represent that they will withdraw their opposition to remand upon granting of this Motion.

7. The dismissal sought is as to the Plaintiffs' claims against Infowars, LLC (aka InfoW, LLC); Infowars Health, LLC (aka IWHealth, LLC); and Prison Planet TV, LLC only. The plaintiffs maintain each and all of their claims against the other defendants in these actions – Alex Emric Jones; Free Speech Systems, LLC; and Genesis Communications Network, Inc. – and this Motion does not in any respect concern or affect those claims.

8. This Motion to Dismiss is made unilaterally by the Plaintiffs, is not the result of any agreement between the Plaintiffs and any of the defendants in these actions, and is made without consideration of any kind from the defendants in these actions.

9. The dismissal sought is with prejudice and without costs.

10. Should the Debtors seek the imposition of any other terms on this dismissal, or should any other terms be imposed by the Court, this Motion is withdrawn.

Dated: Bridgeport, Connecticut
May 13, 2022

By: /s/ *Alinor C. Sterling*
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Counsel for the Individual Plaintiffs[7]

[6]Koskoff, Koskoff & Bieder represents all of the plaintiffs, including Richard M. Coan solely in his capacity as Chapter 7 Trustee of the bankruptcy estate of Erica L. Garbatini.

[7]In connection with this proceeding, Shipman & Goodwin LLP represents Erica L. Garbatini f/k/a Erica Lafferty, David Wheeler, Francine Wheeler, Jacqueline Barden, Mark Barden, Nicole Hockley, Ian Hockley, Jennifer Hensel, Donna Soto, Carlee Soto-Parisi, Carlos Mathew Soto, Jillian Soto, William Aldenberg, William Sherlach, and Robert Parker (collectively, the "Individual Plaintiffs").

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2022, a copy of the foregoing Unopposed Motion to Dismiss Plaintiffs' Claims Against Removing Defendants InfoWars LLC (aka InfoW, LLC), InfoWars Health, LLC (IWHealth, LLC) and Prison Planet TV, LLC with Prejudice was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by First Class mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

I further certify that on May 13, 2022, a copy of the foregoing Unopposed Motion to Dismiss Plaintiffs' Claims Against Removing Defendants InfoWars LLC (aka InfoW, LLC), InfoWars Health, LLC (IWHealth, LLC) and Prison Planet TV, LLC with Prejudice was also served via U.S. First Class prepaid postage on the following parties listed below:

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25526 Hawks Run Lane
Sorrento, FL 32776

Cory T. Sklanka
515 Gracey Avenue
Meriden, CT 06451

Genesis Communications Network, Inc.
Attn. Officer, Managing Agent or Agent for Service
190 Cobblestone Lane
Burnsville, MN 55337

Midas Resources, Inc.
Attn. Officer, Managing Agent or Agent for Service
190 Cobblestone Lane
Burnsville, MN 55337

Norman A. Pattis
Pattis & Smith, LLC
383 Orange Street
1st Floor
New Haven, CT 06511

James H. Fetzer, PH.D.
800 Violet Lane
Oregon, WI 53575

/s/ *Alinor C. Sterling*
ALINOR C. STERLING
CHRISTOPHER M. MATTEI

/s/ *Eric Goldstein*
ERIC GOLDSTEIN
JESSICA M. SIGNOR

EXHIBIT G

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
BRIDGEPORT DIVISION

ERICA LAFFERTY; DAVID WHEELER; FRANCINE WHEELER; JACQUELINE BARDEN; MARK BARDEN; NICOLE HOCKLEY; IAN HOCKLEY; JENNIFER HENSEL; JEREMY RICHMAN; DONNA SOTO; CARLEE SOTO-PARISI; CARLOS M. SOTO; JILLIAN SOTO; WILLIAM ALDENBERG; and RICHARD M. COAN, TRUSTEE OF THE BANKRUPTCY ESTATE OF ERICA L. GARBATINI F/K/A ERICA LAFFERTY Plaintiffs, v. ALEX EMRIC JONES; INFOWARS, LLC; FREE SPEECH SYSTEMS, LLC; INFOWARS HEALTH, LLC; PRISON PLANET TV, LLC; WOLFGANG HALBIG; CORY T. SKLANKA; GENESIS COMMUNICATIONS NETWORK, INC.; and MIDAS RESOURCES, INC., Defendants.	Adv. Pro. No. 22-05004 (JAM) RE: ECF No. 24

ORDER GRANTING UNOPPOSED MOTION TO DISMISS PLAINTIFFS' CLAIMS AGAINST REMOVING DEFENDANTS INFOWARS LLC (aka INFOW, LLC), INFOWARS HEALTH, LLC (aka IWHealth, LLC) AND PRISON PLANET TV, LLC WITH PREJUDICE[1]

Upon the Unopposed Motion to Dismiss Plaintiffs' Claims Against Removing Defendants Infowars LLC (aka InfoW, LLC), Infowars Health, LLC (aka IWHealth, LLC) and Prison Planet TV, LLC With Prejudice (ECF No. 24) ("the Motion to Dismiss"), and upon the record made at the May

[1] There are three consolidated cases in the Connecticut Superior Court: *Lafferty v. Jones* (UWY- CV18-6046436-S), *Sherlach v. Jones* (UWY-CV18-6046437-S), and *Sherlach v. Jones* (UWY- CV18-6046438-S). These cases were removed to this Court under names and docket numbers *Lafferty v. Jones* (22-05004), *Sherlach v. Jones* (22- 05005), and *Sherlach v. Jones* (22-05006). This Order is filed in all three bankruptcy cases: 22-05004, 22-05005, and 22-05006.

24, 2022 status conference held in this case concerning the Motion to Dismiss, the Court GRANTS the Motion to Dismiss and ORDERS as follows on:

1. The claims of plaintiffs David Wheeler, Francine Wheeler, Jacqueline Barden, Mark Barden, Nicole Hockley, Ian Hockley, Jennifer Hensel, Donna Soto, Carlee Soto-Parisi, Carlos M. Soto, Jillian Soto, William Aldenberg, William Sherlach, Robert Parker, and Richard M. Coan as Chapter 7 Trustee of the bankruptcy estate of Erica L. Garbatini (hereafter "the Plaintiffs") pending in these three removed cases (Connecticut Superior Court title and docket numbers *Lafferty v. Jones* (UWY-CV18-6046436-S), *Sherlach v. Jones* (UWY-CV18-6046437-S), and *Sherlach v. Jones* (UWY- CV18-6046438-S), now docketed in this Court as *Lafferty v. Jones* (22-05004), *Sherlach v. Jones* (22-05005), and *Sherlach v. Jones* (22-05006)) against Infowars, LLC (aka InfoW, LLC); Infowars Health, LLC (aka IWHealth, LLC); and Prison Planet TV, LLC are hereby dismissed with prejudice and without costs to any party.

2. Dismissal is ordered only as to the claims specifically described in Paragraph 1 above. This Order does not concern and is not intended to affect the Plaintiffs' rights or claims against the other defendants in these cases – Alex Emric Jones; Free Speech Systems, LLC; and Genesis Communications Network, Inc. – in any respect.

3. The removing defendants Infowars, LLC (aka InfoW, LLC); Infowars Health, LLC (aka IWHealth, LLC); and Prison Planet TV, LLC shall file a withdrawal of their notice of removal by 5 p.m. on Tuesday, May 31, 2022.

4. This Court shall retain jurisdiction solely to interpret, implement, or otherwise enforce this Order.

Dated at Bridgeport, Connecticut this 26th day of May, 2022.

Julie A. Manning
United States Bankruptcy Judge
District of Connecticut

EXHIBIT H

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

IN RE:	§	
INFOW, LLC *et al.*	§	**CASE NO. 22-60020**
	§	
DEBTORS.	§	**CHAPTER 11 (Subchapter V)**
	§	**Jointly Administered**
	§	

STIPULATION AND AGREED ORDER
DISMISSING DEBTORS' CHAPTER 11 CASES
[Related to ECF. No. 50]

This *Stipulation and Agreed Order Dismissing Debtors' Chapter 11 Cases* is entered into by and among the above-captioned debtors (the "Debtors"), Melissa Haselden as the duly appointed Subchapter V Trustee (the "Sub V Trustee") and the United States Trustee ("UST" and together with the Debtors and the Sub V Trustee, the "Parties").

WHEREAS, on April 17, 2022 and April 18, 2022, the Debtors filed their bankruptcy cases which are jointly administered under Case No. 22-60020 (collectively, the "Chapter 11 Cases").

WHEREAS, the Connecticut Plaintiffs filed their *Connecticut Plaintiffs' Emergency Motion to Dismiss Chapter 11 Cases and Objection to Designation as Subchapter V Small Business Vendors* (sic) [ECF No. 36] on April 26, 2022 (the "Connecticut Plaintiffs MTD").

WHEREAS, the Texas Plaintiffs filed *The Texas Litigation Plaintiffs' Supplemental Motion to Dismiss Petition* [ECF No. 42] on April 27, 2022 (the "Texas Plaintiffs MTD").

WHEREAS, on April 29, 2022, the UST filed its *Motion to Dismiss Debtors' Chapter 11 Cases* [ECF No. 50] (the "UST MTD").

WHEREAS, the Texas and Connecticut Plaintiffs have dismissed the Debtors with prejudice from the state court litigation and stipulated that they are no longer creditors and claim holders against the Debtors.

WHEREAS, Marc Schwartz, the Chief Restructuring Officer of the Debtors, has determined that it is in the best interest of the Debtors' estates and their creditors not to continue the Chapter 11 Cases in light of the dismissal with prejudice of the Debtors from the lawsuits against them by the Texas and Connecticut Plaintiffs.

WHEREAS, Debtors and the UST wish to stipulate to the disposition of the Chapter 11 Cases.

Accordingly, it is hereby AGREED and, upon approval of the Court, ORDERED that:

1. The Chapter 11 Cases are hereby dismissed pursuant to 11 U.S.C. § 1112(b) upon entry of this Order.

2. The Sub V Trustee is hereby discharged from her duties upon entry of this Order.

3. Within three (3) business days from the entry of this Order, the Debtors shall advance $25,000 to the Sub V Trustee to hold in her IOLTA trust account for application against any fees and expenses approved for payment by this Court.

4. Within ten (10) days from the entry of this Order, the Sub V Trustee shall file a final application seeking approval of her fees and expenses related to these Chapter 11 Cases. All parties shall have the right to object to and contest the allowance of all fees and expenses sought by the Sub V Trustee.

5. Upon the order approving the Sub V Trustee's fees and expenses becoming a final order, the Sub V Trustee shall take into income the allowed fees and expenses from the IOLTA trust fund account. Any amount remaining after taking the allowed amount into income by the Sub V Trustee shall be returned to the Debtors.

6. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Stipulation and Agreed Order.

Dated: June ___, 2022
Houston, Texas

THE HONORABLE CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE

AGREED TO AND ENTRY REQUESTED:

KEVIN M. EPSTEIN
UNITED STATES TRUSTEE

By: /s/Jayson B. Ruff
Jayson B. Ruff
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